

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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74-1436

B P/S

United States Court of Appeals

For the Second Circuit.

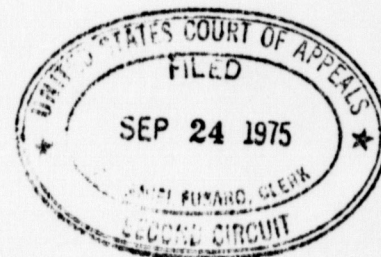
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

-against-

SAMUEL H. SLOAN & Co.,
SAMUEL H. SLOAN,

Defendants-Appellants.



*On Appeal From The United States District Court
For The Southern District Of New York*

Appellant's Appendix

SAMUEL H. SLOAN
For the Defendants-Appellant's
917 Old Trents Ferry Road
Lynchburg, Virginia 24503
(804) 384-1207

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 74-1436

Securities & Exchange Comm.

vs.

CASE NO. 71 Civ 269

JUDGE Ward

Samuel H. Sloan & Co. etc

A TRUE COPY
RAYMOND P. BURKHART, Clerk

EXTRACT OF DOCKET ENTRIES

[Signature]
Deputy Clerk

<u>FILED</u>	<u>DATE</u>	<u>PROCEEDINGS</u>
APR-5-74		Notice of Motion Pursuant to Rule 62(c)--memo endorsed
APR-10-74		Memorandum of Defendant in Support of Motion
APR-22-74		Affidavit of Haddis Simonarson in opposition
APR-22-74		Memorandum in opposition to Rule 62(c) Motion
MAY-2-74		Further Memorandum in Support of Motion
MAY-7-74		Notice of Motion Pursuant to Rule 60(b)(2)--memo endorsed
MAY-9-74		Memorandum in Support of Motion
MAY-16-74		Memorandum in Opposition to Motion
MAY-21-74		Further Affidavit in Support of Rule 60(b)(2) Motion
JUN-14-74		Notice of Motion for Leave to Proceed in Forma Pauperis Pursuant to Rule 24(a)--memo endorsed
JUN-17-74		Notice of Motion for Reargument--memo endorsed
JUN-17-74		Notice of Motion Pursuant to Rule 60(b)(3)--memo endorsed
JUN-17-74		Memorandum in Support of Motion Pursuant to Rule 60(b)(3)
JUN-17-74		Affidavit of Samuel H. Sloan Sworn to June 27, 1974
JUN-18-74		Memorandum of Law of Securities & Exchange Commission in Opposition to Motions
JUN-18-74		Reply Affidavit of Samuel H. Sloan sworn to July 11, 1974
AUG-1-74		Letter from Thomas R. Belne to Samuel H. Sloan
AUG-1-74		Letter from Samuel H. Sloan to Judge Ward
AUG-1-74		Picture Postcards from Samuel H. Sloan to Judge Ward of January 20, 1974 and February 10, 1974
AUG-1-74		Clerk's Certificate

United States District Court
FOR THE

SOUTHERN DISTRICT OF NEW YORK

71 CIVIL ACTION FILE NO. 2695

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN

Defendant

s

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

KEVIN THOMAS DUFFY
Regional Administrator

plaintiff's attorney , whose address

is Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007

an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON

Clerk of Court.

I. WEINBERG

Deputy Clerk.

Date: June 17, 1971

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION	:	71 Civil 2695
Plaintiff,	:	
-against-	:	
SAMUEL H. SLOAN	:	<u>COMPLAINT</u>
SAMUEL H. SLOAN & CO.	:	
Defendants.	:	

Plaintiff, Securities and Exchange Commission ("Commission")
for its complaint, alleges:

1. Defendant Samuel H. Sloan & Co. ("Sloan & Co.") and
defendant Samuel H. Sloan ("Sloan") have been engaged, are
engaged and are about to engage in acts and practices which
constitute and will constitute violations of Sections 15(b)(1),
15(c)(3), 17(a) of the Securities Exchange Act of 1934 ("Exchange
Act"), 15 U.S.C. 78o(b)(1), 78o(c)(3) and 78q(a), and Rules
17 CFR 240.15b1-2, 15c3-1, 17a-3 and 17a-4 promulgated thereunder.
The defendants, unless enjoined will continue to engage in such
acts and practices.

2. The Commission brings this action to enjoin such acts
and practices pursuant to authority conferred by Section 21(e)
of the Exchange Act 15 U.S.C. 78u(e).

3. This Court has jurisdiction of this action under
Section 27 of the Exchange Act, 15 U.S.C. 78aa.

4. The Commission, pursuant to authority conferred in Sections 15(c)(3) and 17(a) of the Exchange Act, 15 U.S.C. 78o(c)(3) and 78q(a) has prescribed Rules 17 CFR 240.15b1-2, 15c3-1, 17a-3 and 17a-4 which are now in effect and at all times hereinafter mentioned have been in effect.

5. Defendant Sloan & Co., a sole proprietorship, maintains its principal place of business in the Southern District of New York at 120 Liberty Street, New York, New York.

6. Defendant Sloan & Co. is and has been, since May 10, 1970, registered with the Commission as a broker and dealer pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b).

7. Defendant Sloan is the sole proprietor of Sloan & Co. and its only officer and employee. Defendant Sloan resides in the Southern District of New York at 164 East 7th Street, New York, New York.

8. As a broker-dealer registered with the Commission, Registrant is a member of the Securities Investor Protection Corporation ("S.I.P.C.") pursuant to Section 3(a)(2) of the Securities Investor Protection Act of 1970 (Pub. L. No.91-598, December 30, 1970). Pursuant to Section 5(a)(1) of said Act, plaintiff has notified S.I.P.C. of the firm's apparent financial difficulties.

FIRST CAUSE OF ACTION

(Section 15(c)(3) of the Exchange Act, 15 U.S.C. 78o(c)(3) and Rule 17 CFR 240.15c3-1 thereunder)

9. The Commission repeats and realleges each and every allegation set forth in paragraphs 1-8 hereof.

10. From sometime prior to January 29, 1971 to the date hereof, defendant Sloan & Co. has violated and defendant Sloan has aided and abetted violations of Section 15(c)(3) of the Exchange Act, 15 U.S.C. 78o(c)(3) and Rule 17 CFR 240.15c3-1 thereunder ("Net Capital Rule") in that said defendants have permitted and are not permitting the aggregate indebtedness of defendant Sloan & Co. to all other persons to exceed two thousand (2,000) per centum of its Net Capital.

SECOND CAUSE OF ACTION

(Section 15(b)(1) of the Exchange Act, 15 U.S.C. 78o(b)(1) and Rule 17 CFR 240.15b1-2 thereunder)

11. The Commission repeats and realleges each and every allegation set forth in paragraphs 1-10 hereof.

12. On or about April 10, 1970, the defendant Sloan & Co. filed a Statement of Financial Condition with the plaintiff Commission as part of its application for registration as a broker-dealer, which was attested to by Sloan and which purported to disclose the nature and amount of assets and liabilities and the net worth of defendant Sloan & Co. as of a date

within 30 days of the filing date, April 10, 1970. That Statement of Financial Condition indicated that Sloan & Co. had on hand or on deposit for its benefit approximately \$10,000 in cash, when in fact said Statement was false and misleading in that no such sum was ever held by or for the benefit of defendant Sloan & Co.

THIRD CAUSE OF ACTION

(Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 CFR 240.17a-3 and 17a-4 thereunder)

13. The Commission repeats and realleges each and every allegation set forth in paragraphs 1 through 12.

14. From sometime prior to January 12, 1970 to the date hereof, defendant Sloan & Co. has violated and the defendant Sloan has aided and abetted the violations of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17 CFR 240.17a-3 and 17a-4 thereunder in that said defendants are permitting and have permitted defendant Sloan & Co. to engage in the business of effecting transactions in securities for the accounts of others and for its own account and during this period, it has been and is now making use of the mails and means and instrumentalities of interstate commerce to effect transactions in and to induce its public customers to purchase and sell securities, while and at a time when its books and records were not made, kept and maintained pursuant to the requirements of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17a-3 and 17a-4,

17 CFR 240.17a-3 and 17a-4 thereunder.

REQUEST FOR A RECEIVER

15. The Commission repeats and realleges each and every allegation set forth in paragraphs 1 through 14.

16. By reason of the defendant's disregard of Sections 15(c)(3) and 17(a) of the Exchange Act, as amended, 15 U.S.C. 78o(c)(3) and 78q(a) and Rules 17 CFR 240.15c3-1, 17a-3 and 17a-4 thereunder, which require that registered broker-dealers maintain a certain minimum ratio between their aggregate indebtedness and net capital and that they make, keep and maintain their books and records in proper form, the defendant Sloan & Co. is at the present time unable to ascertain its financial condition and consequently, unable to ascertain at the present time whether or not it can meet its current financial obligations incurred or to be incurred in the ordinary course of its business. Furthermore, Sloan & Co. had certain customers whose accounts do not appear on its books and records and consequently, neither it nor the Commission is able to determine what monies are due and owing from time to time, nor is it possible to ascertain from the current condition of Sloan & Co.'s books and records whether any other customers of Sloan & Co., in fact, exist.

17. Defendants now have in their possession, custody, or control, certain assets relating to defendant Sloan & Co.'s business as a broker and dealer which assets are being improperly employed for the benefit of Sloan & Co. and which may be further missappropriated, transferred, sold, assigned, pledged or otherwise wasted to the immediate and irreparable loss and damage of persons to whom funds or securities are owing. This immediate misappropriation and irreparable loss and damage is occurring and may continue to occur unless the court appoints a temporary receiver of the assets and property of the defendant Sloan & Co. and authorizes, empowers and directs such receiver to marshal the assets and property, prosecute all claims, choses-in-action and suits in equity, distribute the assets among the persons entitled thereto, maintain, preserve and keep current books and records of the defendant Sloan & Co. and take such other and further action as this Court may deem necessary and proper until such time as the Securities Investors Protection Corporation determines whether defendant Sloan & Co. is in danger of failing to meet its obligations to customers and applies to this Court for the appointment of a Trustee pursuant to Section 5(a)(2) of the Securities Investors Protection Act of 1970.

WHEREFORE, plaintiff Securities and Exchange Commission respectfully demands:

I. A Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and the appointment of a Temporary Receiver

enjoining the defendants Sloan & Co. and Sloan, their agents, officers, servants, employees, attorneys and those persons in active concert or participation with them, or any broker-dealer registered with the Commission of which Sloan becomes a principal or controlling person from:

- (1) Directly or indirectly making use of the mails or means or instrumentalities of interstate commerce to effect any transactions in or to induce or to attempt to induce the purchase of securities while registered with the Commission as a broker-dealer in securities:
 - (a) while and at a time when the aggregate indebtedness of defendant Sloan & Co., or any other registered broker-dealer of which defendant Sloan becomes a principal or controlling person, to all other persons exceeds two thousand (2,000) per centum of its net capital as required by Section 15(c)(3) of the Exchange Act, 15 U.S.C. 78o(c)(3) and Rule 17 CFR 240.15c3-1 thereunder;
 - (b) while and at a time when the adjusted net capital of defendant Sloan & Co. or any broker-dealer registered with the Commission of which Sloan becomes a principal or controlling person is less than a minimum of \$5,000 as required under the Net Capital Rule of the Exchange Act; and

(c) while and at a time when defendant Sloan & Co.'s books and records or those of any broker-dealer registered with the Commission of which Sloan becomes a principal or a controlling person are not made, kept and maintained pursuant to Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17 CFR 240.17a-3 and 17a-4 thereunder.

II. An order restraining the defendant Sloan & Co. and its assignees, principals, agents, servants, employees, attorneys, depositories, banks and those persons in active concert or participation with them, except the receiver herein appointed and his successors, from, directly or indirectly transferring, receiving, charging, selling, pledging, assigning, or otherwise disposing of any assets of the defendant Sloan & Co. or any monies or other properties belonging to others in the possession, custody or control of the defendants;

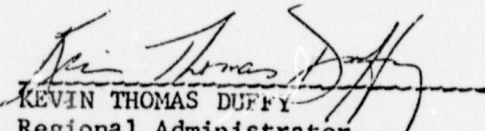
III. An Order:

A. Appointing a Temporary Receiver of all assets and property of and owned beneficially or otherwise by defendant Samuel H. Sloan & Co. and all assets or property which defendant Samuel H. Sloan & Co. carries or maintains for the accounts of others until such time as the Securities Investor Protection Corporation determines whether to seek the appointment of a trustee, pursuant to Section 5(a)(2) of the Securities Investor Protection Act of 1970 (P.L. 91-598);

- B. Ordering that the said Temporary Receiver be authorized, empowered and directed to have full power to marshal such assets and property, prosecute all claims, choses-in-action and suits in equity on behalf of the said defendant to collect and take charge of all assets of and to liquidate the estate of said defendant in order to pay all just claims and all creditors of said defendant and that the Temporary Receiver be authorized and empowered to employ such attorneys, accountants, securities experts and other employees as may be necessary in discharging the above authority; and
- C. Staying and restraining all creditors of defendant Samuel H. Sloan & Co. and all other persons, firms, and corporations, including sheriffs, marshals and other officers and their deputies, and the respective attorneys, servants, agents and employees of any and all such persons, firms or corporations from commencing, prosecuting, continuing or enforcing any suit or proceeding, other than any proceeding to be brought by plaintiff Securities and Exchange Commission with respect to the registration of defendant Samuel H. Sloan & Co. as a broker or dealer, or any action taken by S.I.P.C. pursuant to P.L. 91-598, against defendant Samuel H. Sloan & Co. or from executing or issuing.

or causing, the execution of other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of defendant Registrant or the temporary receiver to be appointed herein, wheresoever situated, and from doing any act or thing whatsoever to interfere with the possession or management of said receiver of the property and assets of defendant Registrant or in any way interfere with said receiver in the discharge of his duties herein, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of the Court over defendant Registrant.

IV. Such and other further relief as this Court may deem necessary and proper.


KEVIN THOMAS DUFFY
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: 264-1636

Of Counsel:

Paul Chernis
William Nortman
George W. Brandt, Jr.

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN

Defendants.

71 Civil Action
File No.

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SHELDON G. KANOFF, being duly sworn, deposes and says:

1. I am employed as a Securities Investigator by the United States Securities and Exchange Commission ("Commission") in its New York Regional Office.

2. I make this affidavit in support of the application by the Commission for a Temporary Restraining Order, the appointment of a Receiver and a Preliminary Injunction restraining and enjoining the defendants from further violations of the net capital and bookkeeping provisions of the Securities Exchange Act of 1934, as amended ("Exchange Act"), specifically Sections 15(b)(1), 15(c)(3) and 17(a) of the Exchange Act, 15 U.S.C. 78o(b)(1), 78o(c)(3) and 78q(a) and Rules 17 CFR 240.15b1-2, 15c3-1, 17a-3 and 17a-4 thereunder.

3. I make this affidavit on information and belief based upon my personal inspection of certain books, records and other documents of defendant Samuel H. Sloan & Co., and upon statements

made to me or in my presence by defendant Samuel Sloan and other persons and information contained in the official files of the Commission.

THE DEFENDANTS

4. Samuel H. Sloan & Co. ("Sloan & Co."), a sole proprietorship with its principal place of business at 120 Liberty Street, New York, New York, 10006, has been registered with the Commission as a broker-dealer since May 10, 1970. Samuel H. Sloan ("Sloan") is the sole proprietor of the firm and resides at 164 E. 7th Street in the Southern District of New York.

VIOLATIONS OF SECTION 17(a) OF THE EXCHANGE ACT AND RULES 17a-3 AND 17a-4 THEREUNDER (FAILURE TO MAINTAIN AND KEEP CURRENT THE FIRM'S BOOKS AND RECORDS

5. The Commission's files indicate that an inspection by another staff investigator was made of Registrant's office on January 12 and 13, 1971 for the purpose of inspecting the firm's books and records. At that time, an attempt was made to examine the firm's records of operations, but due to their condition, the visiting investigator was unable to do so because the firm's records were scattered about and not compiled in any meaningful form.

6. The examination of Sloan's books and records on January 15, 1971, revealed that Registrant had failed to maintain accurate and current records reflecting the operations of the firm. Specifically, this examination revealed that:

1. No trial balance has been prepared for examination as requested and indeed, no trial balance for any month was evidenced;
2. Registrant's General Ledger disclosing the assets, liabilities, income and expense and capital accounts was not maintained in that:
 - a. It contained no account record of bank balances;
 - b. It contained no account record of income and expenses;
 - c. The trading account of the firm was not maintained in a meaningful form, in that entries made were undated and such entries that were made, could not be reconciled to any of the firm's other records;
 - d. Fail to Deliver and Fail to Receive accounts were not maintained in a meaningful form;
 - e. Capital account - this account was posted only to July 9, 1970 and indicated that the firm was a partnership, capitalized at \$10,000 when in fact no such sum was available to the firm as capital.

7. Official records of the Commission indicate that a trial balance as at January 18, 1970 revealed an aggregate indebtedness of \$28,371.04, and a net capital deficiency of \$14,666.35.

8. As part of my duties, I was assigned to inspect the books and records of defendant Sloan & Co. for the purpose of ascertaining among other things the status and condition of its books, records and capital. Pursuant to this assignment I first visited the office of Sloan & Co. on March 19, 1971 for the purpose of making such inspection and receiving from that firm various documents.

9. During the course of the examination of the subject's books and records, I noted that a check bearing the number 292 dated March 1, 1971 in the amount of \$33,387.50 was paid. The check book of the firm indicated no explanation of the entry.

10. Upon questioning Mr. Sloan regarding this item, he stated that a Mr. Joseph Iny of Wayne, New Jersey had advanced to Mr. Sloan some \$58,175.00 with a view to forming a partnership. Mr. Sloan further stated that he and Mr. Iny never consummated this partnership and the above mentioned check was a partial return of Mr. Iny's capital.

11. As a result of my findings, I treated the \$58,175.00 as a Loan Payable which would constitute a liability of the firm, instead of treating it as capital.

12. Analysis of the trial balance as at February 26, 1971 reflected the following capital position:

Net Current Capital		\$28,193.84
Less: 30% market value of proprietary securities	\$36,193.80	
Less: Prescribed % of Fail Penalty	<u>1,821.00</u>	<u>38,014.80</u>
Adjusted Net Capital (Deficit)		(9,820.96)
Aggregate Indebtedness	\$122,808.00	
Required Adjusted Net Capital (20:1 Ratio)	6,140.40	<u>6,140.40</u>
Total Deficiency		(15,961.36)

13. On April 2, 1971, I telephoned Sloan and requested a March 31, 1971 trial balance. He indicated that he would work on it over the weekend and have it for me by Tuesday, April 6, 1971. On April 6, 1971, Sloan called to say that he was having problems balancing his figures and that he would have a trial ready on Thursday, April 8, 1971.

14. On April 8th, I visited Sloan's office with a view to extracting a trial balance.

15. Mr. Sloan did not have a trial balance ready. He further indicated, when I requested his ledgers, that he had none, that his only records were memo slips furnished to his computerized bookkeeping service from which they produced his records. Examination of these daily listings revealed balances only and showed no details or audit trials.

16. Mr. Iny was located in Deal, New Jersey and was interviewed at the Commission's office and questioned about his relationship with Sloan. He stated that he had in fact, purchased substantial amounts of securities through Sloan & Co.

17. Iny stated that between January 29, 1971 and April 2, 1971, he had purchased over 5,000 shares of the common stock of Kaiser Steel Corp. through Sloan & Co. at a total aggregate price of over \$156,000. Iny stated that he has never received any written confirmations of these transactions from Sloan & Co. nor has he ever opened a formal account with the firm.

18. Iny stated that he had paid Sloan with various checks drawn on the First National City Bank and in one instance on the New Jersey National Bank. While these items appeared on the books of Sloan as deposits they were never identified as customers' funds, but more importantly they were posted to the trading account of the firm. Sloan had therefore apparently appropriated to the use of the firm, for purposes of its net capital computation, funds which in fact belonged to a customer. Some of the shares of Kaiser Steel purchased for Iny were also posted and carried in the firm's trading account, which means that they too were carried as assets of the firm and used improperly as part of the firm's capital computation.

19. In Speaking to Mr. Iny it was determined that the aforementioned \$33,387.50 check which Sloan testified was a return on capital was in fact the proceeds of a sale of 1,000 shares of Kiaser Steel stock by Sloan & Co. for Iny. Iny testified that he never at any time contributed cash or stock to the capital account of Sloan & Co.

20. On May 6, 1971, during a visit to the offices of Sloan & Co. I met Mr. Zia Marashi who walked into the offices of Sloan. I asked Marashi what his business was and he indicated to me that he was delivering a certificate of stock which had been sold by him for his account at Sloan & Co. I asked Mr. Marashi to visit the Commission's offices and he did so later that afternoon. At that time in my presence he indicated that he had effected several purchases and sales of stock through Sloan & Co. on a cash basis. Further, he had never formally opened an account with Sloan & Co. nor had he received any written confirmation of any of these transactions. My inspection of the books and records of Sloan & Co. nowhere revealed the existence of Mr. Marashi as a customer of the firm.

21. I received from Sloan & Co. a trial balance as at March 31, 1971. In verifying this trial balance against some of the underlying schedules and records of the firm I have determined that there are substantial funds of not less than

\$18,000 which I am able to attribute to Mr. Iny and another \$25,000 which does not grow out of the business of Sloan & Co. and which I cannot attribute to any other source than perhaps another presently unknown customer of Sloan & Co. These funds are, however, being carried by Sloan & Co. in its trading account and consequently are also being misappropriated for the benefit of the firms capital position. Therefore while the March 31, 1971 trial balances on the surface indicates that Sloan & Co. is in ratio, substantial sums of money are in fact being improperly used in the firm's capital to arrive at that calculation, a calculation which appears to be in conformity with the net capital rule.

22. Repeated demands have been made on Sloan for proper trial balances of Sloan & Co. as at April 30, 1971 with supporting schedules and documentation. These trial balances with the necessary supporting documents and schedules have, to date, not been forthcoming. What Sloan has provided the Commission's staff has not been sufficient to allow the staff to properly verify Sloan & Co.'s capital position pursuant to the Commission's rules and regulations. Sloan has consistently refused to come forward with complete documentation to support what he alleges are trial balances of his firm.

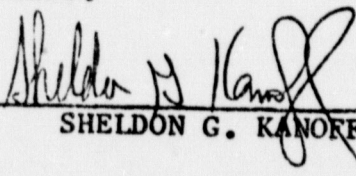
23. Upon Registrant's initial filing for broker-dealer registration, it was indicated in its statement of financial condition that Registrant held \$10,000 in cash as an asset of the firm. Sloan testified, under oath, that no such sum was ever on deposit in an account of the firm. Sloan indicated that various sums of money would be made available to the firm on an ad hoc basis. In short, Registrant filed a false statement of its financial condition upon its application for registration as a broker-dealer by representing that the firm had \$10,000 in cash when it became registered.

24. Since early March of 1971, the staff has given the defendants Samuel Sloan and Samuel H. Sloan & Co. every opportunity to comply with the net capital and bookkeeping rules in light of the fact of the defendant Sloan & Co.'s newness in the brokerage business. As already stated, I have visited the defendants' offices on a regular basis for the purpose of inspecting its books and records. Defendant Sloan has visited the Commission's office on numerous occasions and at those times promised to supply me with the required supporting documents and supporting schedules. Nevertheless, he has on numerous times lied under oath to me and other members of the staff about the existence of customers and the nature of certain assets of Sloan & Co.

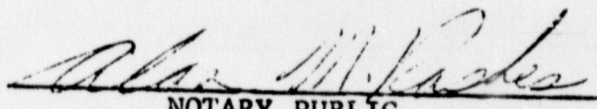
Furthermore, it is clear to me that, since I and the staff have been waiting for trial balances from Sloan & Co. for the months ending April 30 and May 31, 1971 and they have not been forthcoming despite Sloan's promises, that they will not be forthcoming. Specifically I telephoned Sloan & Co. on Tuesday, June 8, 1971 and requested the long overdue April and May trial balances by the afternoon of Thursday, June 10 and as recently as Tuesday, June 15, 1971. Sloan promised they would be forthcoming; they have not been received to date.

✓ 25. I have been advised by attorneys on the staff of the Commission that no previous application for the relief sought has been made to this Court or to any Judge thereof.

✓ 26. By reason of the above stated facts, plaintiff Securities and Exchange Commission respectfully submits that a clear and specific showing has been made of sufficient reasons why the Commission's motions herein are brought by application for an Order to Show Cause.

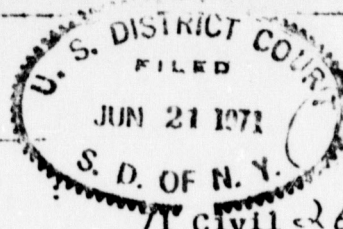

SHELDON G. KANOFF

Sworn to before me this
17th day of June, 1971.


NOTARY PUBLIC

ALAN M. RASHES
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-8496650
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES MARCH 30, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN

Defendants.

:
: ORDER TO SHOW CAUSE
: AND TEMPORARY RE-
: STRAINING ORDER AND
: FREEZE ON ASSETS

On motion of the plaintiff Securities and Exchange Commission, and upon the complaint in this action the Memorandum of Law, and the affidavit of Sheldon G. Kanoff, a Securities Investigator in the New York Regional Office of the Securities and Exchange Commission, annexed hereto, and all other papers and prior proceedings herein, and it appearing that the defendants, pending final determination of this action will, unless restrained, continue to engage in acts and practices in violation of Section 15b(1), 15(c)(3) and 17(a) of the Securities Exchange Act of 1934 as amended, ("Exchange Act"), 15 U.S.C. 78o(b)(1), 78o(c)(3) and 78q(a) and Rules 17 CFR 240.15b1-2, 15c3-1, 17a-3 and 17a-4 thereunder, and that immediate and irreparable injury, loss and damage will result to members of the investing public and other brokers and dealers in securities, it is hereby:

ORDERED, that defendants Samuel H. Sloan & Co., and Samuel H. Sloan show cause, if any there be, before a Judge of this Court at 10:00 a.m. o'clock in the forenoon on June 22, 1971 at Room 506, United States Courthouse, Foley Square, New

York, New York or as soon thereafter as counsel can be heard, why a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure should not be ordered for the relief sought by the plaintiff herein and why plaintiff's motion for a temporary receiver should not be granted; it is further

ORDERED, that pending determination of this motion for a preliminary injunction the defendants Samuel H. Sloan & Co. and Samuel H. Sloan, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them and each of them, be and hereby are restrained from:

A. Directly or indirectly making use of the mails or means or instrumentalities of interstate commerce while defendant Samuel H. Sloan & Co., is a broker or dealer in securities, to effect any transaction in or to induce or attempt to induce the purchase or sale of a security (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange:

- (1) while and at a time when the aggregate indebtedness of defendant Samuel H. Sloan & Co. to all other persons exceeds two thousand (2,000) per centum of its net capital as required by Section 15(c)(3) of the Exchange Act, 15 U.S.C. 78o(c)(3) and Rule 17 CFR 240.15c3-1 thereunder; and

- (2) while and at a time when the adjusted net capital of defendant Samuel H. Sloan & Co. is less than the minimum of \$5,000 as required under the Net Capital Rule of the Exchange Act.

B. Directly or indirectly making use of the mails or of any means or instrumentalities of interstate commerce, to effect any transactions in or to induce the purchase or sale of a security;

- (1) while and at a time defendant Samuel H. Sloan & Co.'s accounts, correspondence, memoranda, papers, books and other records are not kept and maintained pursuant to Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17a-3 and 17a-4, 17 CFR 240.17a-3 and 17a-4 thereunder.

AND IT IS FURTHER ORDERED, that pending determination of plaintiff's motion for the appointment of a temporary receiver, the defendants Samuel H. Sloan & Co. and Samuel H. Sloan, their officers, agents, servants, employees, depositories, banks and those persons in active concert or participation with them be, and hereby are, restrained from directly or indirectly transferring, liquidating, pledging or otherwise disposing of any assets of the defendant Samuel H. Sloan & Co. until such time as the aforesaid defendant is in compliance with Sections 15(b)(1), 15(c)(3) and 17(a) of the Securities Exchange Act of 1934, as

except completing
transactions heretofore
committed

amended, 15 U.S.C. 78o(b)(1), 78o(c)(3) and 78q(a) and Rules
17 CFR 240.15c3-1, 17a-3 and 17a-4 thereunder.

✓ Service of the within Order shall be effected upon the
defendants herein on or before 12 o'clock in the ~~after~~
noon, June 21st, 1971.

Service of this Order, Summons and Complaint, Affidavits
and Memorandum of Law may be made by representatives of plaintiff
Securities and Exchange Commission.

Edward C. Wilson
UNITED STATES DISTRICT JUDGE

✓ Dated: New York, New York
June 21st, 1971
Issued at 10⁴⁰ m.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3
4 SECURITIES AND EXCHANGE COMMISSION,

5 Plaintiff,

6 v.

7 SAMUEL H. SLOAN & CO. and SAMUEL
8 H. SLOAN,

9 Defendants.

10
11 Before:

12 HON. EDWARD C. McLEAN,

District Judge.

13
14 New York, June 23, 1971;

15 10:45 a.m.

16
17 APPEARANCES:

18 GEORGE W. BRANDT, JR., ESQ., and
19 WILLIAM NORTMAN, ESQ.,

Attorneys for plaintiff.

20
21 ROY WEISS, ESQ.,

Attorney for defendant,

22 475 Fifth Avenue,
23 New York, N.Y.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, NEW YORK 10007

TELEPHONE CORTLANDT 7-4580

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

ONLY COPY AVAILABLE

MR. BRANDT: The SEC is ready, your Honor.

MR. WEISS: Defendants are ready, your Honor.

THE COURT: I'm sorry to have held you up, gentlemen, but I had a deluge of ex parte business this morning, temporary restraining orders, and whatnot. That's one of the difficulties of trying to do any other business during motion week.

You have got some witnesses you want to call?

MR. BRANDT: Yes, your Honor.

MR. WEISS: Your Honor, there have been some attempts at a compromise which I think the Court should be made aware of, if I may.

THE COURT: All right.

MR. WEISS: After we left your chambers the other day the attorneys had a discussion and the Commission made an offer which is as follows:

They would request that the defendants consent to a permanent injunction; they would also request that the defendants hire an accountant satisfactory to them who would prepare an audit of the books and records of the defendant as of June 30th and submit a report, a certified report, to the Commission on or before July 30th. In addition, they would require that the defendant file a certain amendment to its original ED application

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2 clarifying certain statements that were made.

3 Following this discussion the Commission, the
4 staff of the Commission, had recommended a certain accountant.
5 I and the defendant had gone down to see him and we
6 had spoken to him and he was prepared to carry out the
7 necessary report as requested by the Commission.

8 After such soul-searching my client objects to
9 that offer for the following grounds:

10 One, he believed that the stigma of a permanent
11 injunction would be too great for him to overcome in the
12 marketplace.

13 Since the new Act, the Securities Investment
14 Protection Act, has been in effect which protects only
15 members of the public and does not protect brokers dealing
16 with another broker, brokers have become additionally
17 sensitive as to the stigma placed upon a broker-dealer
18 who is subject to any sort of court injunction, and there
19 have been instances where they have not continued to do
20 business. Although I am sure the Commission will not
21 issue a news release to the Wall Street Journal, they do
22 issue a litigation release which carries the facts of any
23 litigation, and also this information is in the New York
24 Stock Exchange release. So there is some dissemination
25 of this information.

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3 My client, as I said, for these reasons res-
4 pectfully refuses or rejects the offer of the Commission,
5 which I do not consider unfair, your Honor. My client,
6 however, would like to make a counter proposal which has
7 been made to the Commission which they have rejected.

8 From the Commission's point of view they are
9 fearful that the public will be injured. They say that
10 they do not have sufficient information upon which to act.

11 My client indicated that he would be willing to
12 cease business immediately. He would repain the account-
13 ant that is satisfactory to the Commission and the account-
14 ant would be prepared to prepare the audit as of June
15 30th and to submit the report on or before July 30th.
16 During this interim the only business my client would do
17 would be to consummate uncompleted transactions which would
18 be as follows: He would be in a position to sell
19 securities that he is long on; he would be in a position
20 to cover short sales. In effect what he is doing is
21 liquidating his position in an orderly manner but would
22 not be doing any other business. Any funds that
23 came in would go in his account which the Court, I am
24 sure, can find some suitable method of protecting and
25 insuring that it will be there, because that's the
Commission's point of view, that the account wouldn't

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2 be there, so I am sure an arrangement can be made; also
3 the mechanics of what checks have to be issued to pay for
4 certain securities; what other expenses necessary for the
5 liquidation of the business could be carried out.

6 After the Commission had this report, which
7 would be prepared by someone acceptable to them, then they
8 would be in a position to make a judgment based upon facts
9 that they consider concrete as to whether they should pro-
10 ceed or not proceed with this action.

11 In my discussion with the Commission this was
12 rejected. At one time Mr. Norton made the suggestion
13 that rather than have my client agree to a permanent
14 injunction he should agree to a preliminary injunction,
15 but we withdrew that rather quickly.

16 THE COURT: I suppose it could be provided that
17 any consent that any defendant might make to a temporary
18 or permanent injunction is without any showing of wrong-
19 doing.

20 MR. WEISS: I have spoken to my client about that.
21 That's correct. I agree with the Commission, that that's
22 the usual and standard method of disposing of this. I
23 have no desire to take the Court's time or the additional
24 time of the Commission. Only my client, for reasons that
25 I stated, feels individually rather strongly that the acts

that he has done do not warrant such a harsh remedy as the Commission is seeking.

I told him on numerous occasions that it would be much simpler to work out some sort of compromise along those lines, but those are his feelings and despite numerous discussions with him he adheres to that principle, your Honor.

THE COURT: I don't see that there is anything before me then. I am here to take the testimony and make a decision. It is too bad you can't agree on this position but I don't know what I can do about it.

MR. WEISS: Well, your Honor, I thought that my client's proposal to the Commission went much further than they want, because on the Commission's proposal as soon as my client entered into an agreement with this accountant to have the report done he would be free to do business irrespective of the fact that the Commission would not receive a report until the latter part of July. My client could continue to do business. Under my client's proposal he is voluntarily ceasing to do business which goes much further than what the Commission desired. Again, the motivation of my client is that he would like to be vindicated and that until such time as he can show this through a certified report he is willing to suffer not

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2 doing any business.

3 Certainly there is an analogy here, 'your Honor'
4 If a firm that has publicly been trading stock is under
5 investigation the stock will not be publicly traded until
6 certain financial information is analyzed by the Exchange.

7 So the suggestion by my client to the Commission
8 in an effort to compromise this matter I do not think is an
9 entirely false one. I believe that it certainly is work-
10 able and I think it is a method of resolving it.

11 THE COURT: You say he proposes to stop business
12 except he is going to be free to buy and sell on transactions
13 already initiated?

14 MR. WEISS: There would be a list of securities?
15 that would be given to the Exchange. For example, there
16 are certain securities that he is long in. Under the net
17 capital rule there is a 30 per cent deduction taken for
18 securities. My client, in order to liquidate that posi-
19 tion and be in a better financial position may want to sell
20 those securities and it would be specifically what securi-
21 ties there are. Any funds that are derived from the sale
22 of those securities would be placed into the bank account
23 and would stand instead of the securities, so there would
24 not be any diminution of the estate that would be available
25 for creditors if the fears of the Commission do exist.

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2 Similarly, short positions would be closed out
3 and there would not be any diminution. The list of these
4 positions would be given to the Commission beforehand.
5 So there would not be any new trading which had not
6 already been stated before. So there would not be a
7 carte blanche by my client what to do.

8 The only purpose here is to have an orderly
9 liquidation of those positions until such time as the
10 Commission either says Yes or No to them based upon this
11 report. That would be necessary because otherwise if no
12 one had taken care of this and everything just remained in
13 the status quo due to the factor that the price of the
14 stock changed, of course there might be disastrous results
15 unless someone looked after it in this way and liquidated--

16 THE COURT: How many securities are there in
17 which he is long?

18 MR. WEISS: How many specific securities would
19 there be? Twenty? Give me the approximate number.

20 MR. SLOAN: 68.

21 MR. WEISS: 68.

22 THE COURT: 68 different stocks that he would be
23 free to sell provided he put the proceeds in the bank.

24 MR. WEISS: Yes, your Honor.

25 THE COURT: And then how many short positions?

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2 MR. WEISS: That's combined. That was long
3 and short positions combined.

4 THE COURT: That would be a lot of transac-
5 tions?

6 MR. WEISS: 21 short positions, your Honor,
7 and the difference between 68 are long positions.

8 MR. BRANDT: 47, your Honor.

9 MR. WEISS: What I would propose is since we
10 communicate very well with Mr. Nortman, before any transac-
11 tion take place I communicate with Mr. Nortman specifically.

12 THE COURT: It would seem to me before I hear
13 from the Commission that if he would consent without any
14 admission of liability to a preliminary injunction subject
15 to the qualification that he can liquidate these positions,
16 that might well dispose of it.

17 MR. WEISS: Your Honor, I have spoken to him about
18 this but he still feels that the stigma of any injunction is
19 too burdensome in the marketplace, and that, of course,
20 he feels --

21 Your position has not changed?

22 MR. SLOAN: No.

23 THE COURT: It is up to him. What did you want
24 to say?

25 MR. NORTMAN: Several things.

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2 To begin with, I would like to put in context
3 the offer that Mr. Weiss has just mentioned that we had
4 discussed at the meeting with you on Monday. We had made
5 the suggestion that this accountant come in for the pur-
6 pose of deciding ultimately whether or not a receiver
7 should be appointed. We never took the position that the
8 accountant was necessary not only to establish the need for
9 a receiver but also to establish whether or not the violation
10 which we allege in our papers occurred. It was our position
11 that as a bedrock the Commission feels that the violations
12 did occur and that as a result the protection that an
13 injunction would afford both the Commission and members of
14 the public is necessary.

15 We were taking a somewhat more flexible posi-
16 tion with respect to the other issue in this case, whether
17 or not a receiver should be appointed, and it was with that
18 in mind that I made the counter proposal rather than have a
19 receiver put in immediately, let's have a certified public
20 accountant look at the situation, report back to us, and
21 after we reviewed the results of his report then, at our
22 discretion, we would make an assessment of the situation
23 and perhaps renew or not renew our application to the
24 appointment of a receiver.

25 THE COURT: You want a preliminary injunction to

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2 begin with?

3 MR. NORTMAN: Definitely. We felt we might
4 resolve that aspect by getting a consent to a permanent
5 injunction. That has not worked out.

6 I might also point out that from the outset we
7 were willing to make the concession that the injunction
8 could be without admitting or denying the substantive
9 allegations in the Commission's complaint.

10 With regard to the proposal that Mr. Weiss has
11 just presented to your Honor, I would point out that we
12 already have experienced several difficulties in administer-
13 ing Mr. Sloan's affairs. If you recall, you made an
14 exception in the temporary restraining order on Monday
15 morning except transactions heretofore committed. As a
16 result I have been on the phone innumerable times with
17 either Mr. Sloan or Mr. Weiss finding out what checks were
18 written prior to your Honor's signing the temporary
19 restraining order. Then I had to communicate with the
20 bank and tell them, in effect, these checks are kosher to
21 clear prior to the time because they were written before
22 your Honor signed the temporary restraining order.

23 Mr. Weiss, I think, fails to realize that our
24 manpower is very limited, and perhaps in the ideal situation
25 it would be very nice if we could, in effect, be a nurse to

each other and every fledgling broker, but we can't operate this way, and I think your Honor appreciates the problem the Commission is confronted with.

Under the proposal we made we would be telling Mr. Sloan, "You consent to the injunction." All the injunction requires you to do is to do what you are supposed to do in the first place, namely, keep your house in order and make sure you have sufficient capital. If that's done we have no quarrel with you. Then we will take a look at the situation. If the books and records as verified by an accountant in fact say there are no more public customers, although we are prepared this morning to prove that he has done business with members of the public, then we might take a very different view as to the necessity of a receiver at this point. That's the position of this office, your Honor.

THE COURT: Again I say I don't know what I can do.

MR. WEISS: Your Honor, my client has no quarrel with these provisions of an injunction that would indicate that he may not do business so long as he is not in violation of the net capital rule, and if he fails to keep his books and records. There is no quarrel with that. The only quarrel that he has is with the word "injunction,"

and it is broadcast to the industry. That's the only quarrel we have.

I appreciate Mr. Northman's statements, Your Honor, but I would hope that concepts of fairness and justice would not be limited by such mundane things as the fact that it takes more time.

THE COURT: Do you want to talk to your client further and see if he wants to agree to a preliminary injunction on these terms?

MR. WEISS: May I speak to him, sir?

THE COURT: Yes.

(Pause.)

MR. WEISS: Your Honor, my client is unclear about one thing. I think I understand it. Perhaps my client does not. As I understand it, the proposed settlement, as soon as my client retains Mr. Taylor and he delivers to the Commission evidence that he has been retained my client would then be permitted to resume business?

MR. NORTHMAN: The way we thought it over, the temporary restraining order would be vacated and Mr. Sloan, in effect, would be a free agent subject to the injunction that he would consent to, and like any other broker-dealer if he is in compliance with the bookkeeping and net-capital

rule, that's the ball of wax. If he is not, we will investigate the situation and take any necessary steps we feel would be required to protect the public and vindicate the Court's order.

THE COURT: The injunction that you speak of which he would consent to, the statement that he is not admitting any violation, is, I take it, an injunction restraining him from, in effect, doing business while he is in violation of the net-capital rule and while he has not maintained his books and records in accordance with the statute?

MR. NORTMAN: That's correct, your Honor.

THE COURT: And that's all?

MR. NORTMAN: In addition to that there would be one other --

MR. WEISS: About the amendment of the "BD" --

MR. NORTMAN: There would be a provision in the order whereby the defendant would be ordered to submit an amendment to his broker-dealer application because as our complaint and affidavit indicate we take the position that there was a misstatement of the initial capitalization of the firm, and we would like a clarification as to what the precise financial condition of this company was at the time they registered with the Commission.

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2 As a matter of fact, your Honor, I do have a
3 copy, a draft copy, with some handwritings on it, that I
4 read to Mr. Weiss on the telephone on Monday when we
5 thought we might have some kind of deal and it is couched
6 in the terms of a permanent injunction, but other than
7 that, I think your Honor, if you are interested, could
8 get an overall view as to what we had in mind.

9 MR. WEISS: Similarly, Mr. Norman, there would
10 not be any restraint on his bank account because my client
11 felt he was prejudiced because when the bank, the Chemical
12 Bank, was served with the restraining order, they took it
13 upon themselves not to read it carefully to see that
14 there was an exception for existing transactions, but
15 to bounce all of the checks before Mr. Norman was in a
16 position to get back to them, and a considerable number of
17 checks have bounced which, your Honor, neither the
18 Commission nor myself intended at the time the order was
19 written. But the bank just did that as a matter of
20 course. Perhaps because they just saw the restraining
21 order and didn't read it carefully and the provisions
22 were not explained to them in time.

23 That's one of the things you were concerned
24 with?

25 MR. SLOAN: Yes.

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2 THE COURT: What I want to get clear is this:
3 Before I read all this draft that you have handed me, is
4 what I said correct? That that's what the injunction
5 would be?

6 MR. NORTMAN: Yes.

7 THE COURT: That means, to be explicit, that the
8 injunction would not contain a further provision that the
9 temporary restraining order, which, in effect, restrained
10 the defendant from doing any business except the comple-
11 tion of transactions heretofore permitted --

12 MR. NORTMAN: I didn't have an opportunity to
13 write that provision in, but we have taken the view, as I
14 indicated to your Honor a few moments ago, that if we had
15 the protection of the injunction we would have no objec-
16 tion to the temporary restraining order being vacated
17 and we would write in the provision that upon the entry of
18 this order the temporary restraining order would be
19 vacated.

20 THE COURT: And the injunction would not contain
21 this provision?

22 MR. NORTMAN: Samuel Sloan would be free to
23 operate like any other broker-dealer provided he complied
24 with the injunction.

25 THE COURT: He could continue then to do

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2 business in the normal way provided he was not in contempt
3 of the injunction or acting at a time when his net capital
4 or his records were not in accordance with the statute.

5 MR. NORTMAN: That's the protection we seek.

6 THE COURT: As I understand it, if the defendant
7 maintains that his records are in accordance with the
8 statute and the net-capital rule is in accordance with the
9 statute, and, of course, that's the issue I have here to
10 decide -- but if he says that that is the fact, I don't
11 quite see why he should be reluctant to accept an injunction
12 on that basis; however, that's up to him. I can't do
13 anything but try it if you want to try it.

14 MR. WEISS: May I speak to my client again,
15 your Honor?

16 THE COURT: All right.

17 (Pause.)

18 MR. WEISS: Your Honor, my client would consent
19 to the entry of the preliminary injunction with the under-
20 standing that as soon as your Honor executes it and pro-
21 vided he feels he is not in violation of the net-capital
22 rule and the bookkeeping-record rule that he be permitted
23 to resume business.

24 THE COURT: Suppose you take a look at this
25 draft.

MR. WEISS: I think that was our agreement.

THE COURT: Have you seen this draft?

MR. NORTMAN: I read it on the phone.

THE COURT: You might want to take a look at it. I should think you better call it a preliminary, and if there is any further difficulty you can renew your application for a receiver and go on from there, whereas if you enter a final permanent injunction that seems to me to pretty well end the action.

MR. NORTMAN: Your Honor, we would, of course, like to make it clear in an order that I understood that Mr. Weiss has indeed contacted the certified public accountant that we had recommended but until such time, unless we get an assurance from Mr. Weiss on the record that there is firm commitment to retain this certified public accountant, we would like the temporary restraining order frozen, in effect, because --

MR. WEISS: I will give you that assurance. That is satisfactory.

THE COURT: Let him read that and give him a chance to catch up with you.

(Pause.)

MR. WEISS: The language or substance is correct.

MR. NORTMAN: The only problem is that we had

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2 brought a witness down here who will be unavailable after
3 tomorrow. He will be returning to the Middle East then.
4 In the event that a problem does develop in the future
5 and we feel his testimony will be needed in regard as to the
6 issue there with public customers, we would like an
7 opportunity to take his testimony before your Honor or
8 perhaps we could arrange for a deposition sometime this
9 afternoon, and we would like permission of the Court to do
10 one of those things.

11 THE COURT: Otherwise you are in agreement?

12 MR. NORTMAN: With regard to the consent, yes.

13 THE COURT: I suggest we adjourn this hearing
14 then for whatever time is necessary for you to get this
15 typed up in final form. That will dispose of the applica-
16 tion. You can do that between now and Monday, can't you?

17 MR. WEISS: I would like to have this prepared
18 today.

19 MR. NORTMAN: We could have that done today.

20 MR. WEISS: I will go with you now and you can
21 have that done. If your Honor will be here we will bring
22 it to your chambers.

23 THE COURT: I will adjourn the hearing until
24 10 a.m. on Friday, which is June 25, and if this is sub-
25 mitted to me in the meantime there won't be any hearing.

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I assume that everything will take place according to plan. You never know. We will put an adjourned date on it. I will expect to receive a consent order from you for Friday, and as far as this witness is concerned, who is going back permanently to the Middle East -- how long is he going to be gone?

MR. NORTMAN: Until around September 4th or September 5th, your Honor.

THE COURT. Can't you agree to take his testimony right here and now? You don't need me for that. I will sit here for a brief time, if you like, but do it by way of deposition for future use if it ever should become necessary.

MR. NORTMAN: That would be fine. We have a court reporter here. We could make this a separate transcript of the deposition.

THE COURT: This won't take very long.

MR. NORTMAN: No more than half an hour, your Honor.

THE COURT: Consider this a deposition rather than testimony on a hearing. You go ahead and take it right here since everybody is here; you have a court reporter. You don't need me for this, I hope. I have got lots of other things to do. If you do need me for any

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2 reason you will find me up in my chambers. I will expect
3 to get a consent order from you between now and Friday.

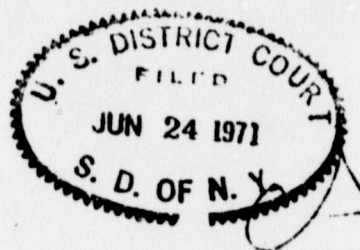
4 Time noted: 11:25 a.m.)

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14 I (We) hereby certify that the foregoing
15 is a true and accurate transcript, to the best
16 of my (our) skill and ability, from my (our)
17 stenographic notes of this proceeding.

18 *Philip Golden*

19 Official Court Reporter
20 U. S. District Court
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22
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN

Defendants.

71 Civil 2695

CONSENT ORDER OF PRELIMINARY
INJUNCTION

The Securities and Exchange Commission ("Commission") plaintiff, having filed its Complaint herein on June 17, 1971 and it being alleged, that unless the defendants Samuel H. Sloan & Co. and Samuel H. Sloan are enjoined, violations by the defendants of Sections 15(b), 15(c)(3) and 17(a) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78o(b), 78o(c)(3) and 78q(a) and Rules 17 CFR 240.15b1-2, 15c3-1, 17a-3 and 17a-4 thereunder, will continue, and it further appearing that defendants Samuel H. Sloan & Co. ("Sloan & Co.") and Samuel H. Sloan ("Sloan"), its president and sole proprietor, having entered general appearances, having admitted the jurisdiction of this Court and upon the Court having previously issued a Temporary Restraining Order against said defendants, and having undertaken not to waste the assets of the defendant Sloan & Co., and upon advice of counsel, having consented, without admitting or denying the substantive allegations of

the plaintiff's Complaint herein, to the entry of an Order of Preliminary Injunction, upon the terms and conditions hereinafter set forth, and said defendants further agreeing that an independent accountant will be retained for the purpose of conducting a certified audit of the defendant Sloan & Co., as of June 30, 1971, and the defendants further consenting to submit the results of such audit to the plaintiff Commission, on or by July 31, 1971, or the first business day thereafter, and the plaintiff agreeing to hold in abeyance further proceedings on its part until such time that the results of the aforesaid audit are made available to the Commission for its review, it is hereby

ORDERED, that the defendants Samuel H. Sloan & Co. and Samuel H. Sloan, their officers, directors, agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them, and each of them, be and they hereby are preliminarily enjoined from:

- A. Directly or indirectly making use of the mails or means or instrumentalities of interstate commerce, while and at a time when the aggregate indebtedness of defendant Sloan & Co., or any other registered broker-dealer of which defendant Sloan becomes a principal or controlling person, to all other
- to effect any transaction in or to induce or attempt to induce the purchase or sale of a security (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national ~~xxx~~ securities exchange,
20. n'x

persons exceeds two thousand (2,000) per centum of its net capital as required by Section 15(c)(3) of the Exchange Act, 15 U.S.C. 78c(c)(3) and Rule 17 CFR 240.15c3-1 thereunder;

- B. While and at a time when the adjusted net capital of defendant Sloan & Co., or any broker-dealer registered with the Commission of which defendant Sloan becomes a principal or controlling person, is less than a minimum of \$5,000 as required under the Net Capital Rule of the Exchange Act; and
- C. While and at a time when defendant Sloan & Co.'s books and records, or those of any broker-dealer registered with the Commission of which defendant Sloan becomes a principal or a controlling person, are not made, kept and maintained pursuant to Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17 CFR 240.17a-3 and 17a-4 thereunder.

IT IS FURTHER ORDERED,

- A. That defendants Samuel H. Sloan & Co. and Samuel H. Sloan, and each of them, shall retain an Independent Certified Public Accountant, for the purpose of conducting a certified audit of the

financial affairs and books and records of defendant Sloan & Co., as of June 30, 1971;

- B. That said audit be completed on or before July 31, 1971; and
- C. That the audit report and any other report prepared by the Certified Public Accountant, as well as a Net Capital Computation, prepared by said accountant, as well as all underlying schedules and records, be submitted to the New York Regional Office of the plaintiff Commission on or before July 31, 1971, or the first business day thereafter.

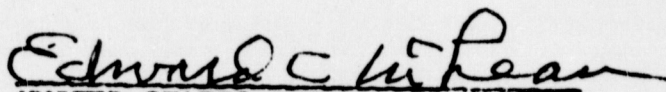
AND IT IS FURTHER ORDERED,

- A. That pending the completion of the certified audit as referred to above herein, plaintiff Commission will hold in abeyance further proceedings herein, and that upon receipt of the results of the certified audit, the net capital computation and the underlying schedules and records, the plaintiff Commission, at its discretion, may renew its application for the relief requested in the Complaint filed herein, if it appears upon review of the results of the aforementioned certified audit, that further proceedings are necessary in the public interest.

AND IT FURTHER ORDERED, that the defendants Samuel H. Sloan & Co. and Samuel H. Sloan will file with the plaintiff Commission within 14 days upon the signing of this Order, an amendment to the broker-dealer application it filed with plaintiff Commission on or about April 10, 1970, clarifying the financial condition of defendant Sloan & Co. on or about April 10, 1970.

AND IT IS FURTHER ORDERED,

- A. That the Temporary Restraining Order, heretofore issued by this Court on June 21, 1971, will be vacated upon the signing of this Order by the Court;
- B. That this Court shall retain jurisdiction of this matter for all purposes.


UNITED STATES DISTRICT JUDGE

Dated: New York, New York
June 24, 1971

CONSENT

Solely for the purposes of this proceeding, the defendants Samuel H. Sloan & Co., through its president and sole proprietor, Samuel H. Sloan and Samuel H. Sloan individually, admits the jurisdiction of this Court, and hereby consents to the entry of the within Order of Preliminary Injunction without further notice, without admitting or denying the allegations set forth in the Complaint.

No tender, offer, promise or threat of any kind whatsoever has been made by plaintiff Securities and Exchange Commission, or any member, officer, agent or representative thereof, in consideration of the foregoing consent.

The Court shall retain jurisdiction in this matter for all purposes.

SAMUEL H. SLOAN & CO.

By

Samuel H. Sloan
Samuel H. Sloan, President

Samuel H. Sloan
Samuel H. Sloan, Individually

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 23rd day of June, 1971, before me personally appeared Samuel H. Sloan, to me known and known to me to be the person who executed the foregoing instrument on behalf of Samuel H. Sloan & Co. and Samuel H. Sloan, individually, and he duly acknowledged to me that he executed the same on behalf of Samuel H. Sloan & Co. and Samuel H. Sloan, individually.

Alan M. Rashes
NOTARY PUBLIC

ALAN M. RASHES
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-8496650

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN

Defendants.

71 Civil 2695

AFFIDAVIT

RECEIVED
OF THE SECRETARY

JUN 29 1973

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ALAN M. RASHES, being duly sworn, deposes and says:

1. I am an attorney employed in the New York Regional Office of the United States Securities and Exchange Commission ("Commission").

2. On May 4, 1973 at a pre-trial conference before Judge Robert J. Ward, Thomas R. Beirne ("Beirne"), a Chief Enforcement Attorney on the staff of the New York Office, and I suggested the use of the transcripts of testimony in the Administrative Proceeding in this matter in lieu of the Court's holding a full evidentiary hearing. Mr. Robert W. Taylor ("Taylor"), Samuel H. Sloan's attorney, strenuously objected. Judge Ward, upon learning of the issuance of the Administrative Law Judge's Initial Decision, stated that he would hold the hearing on the Permanent Injunction in abeyance pending the outcome of Sloan's appeal of the Initial Decision to the Commission. Judge Ward scheduled another pre-trial conference for September 13, 1973.

3. On May 16, 1973, by letter attached hereto as Exhibit 1, Taylor requested use of the official transcript of the Administrative Proceeding for a one week period.

4. On May 17, 1973 by letter attached hereto as Exhibit 2, Beirns denied Taylor's request for possession of the transcript. Taylor was reminded that in the preparation of Sloan's brief in the Administrative Proceeding he had been afforded the opportunity to review the transcript of the Administrative Proceeding and had, in fact, reviewed the transcript for several hours in the Commission's New York Office.

5. On May 25, 1973 the Commission issued an Order granting a petition for review and gave Sloan 30 days after service of the order to file his brief.


6. By letter of June 8, 1973, attached hereto as Exhibit 3, Taylor requested that Ronald H. Hunt ("Hunt"), Secretary of the Commission, extend the time required for Sloan to file his appeal brief for 30 additional days to July 31, 1973. Taylor's reason for this request was the New York Regional Office's refusal to supply him with a copy of the transcript of the Administrative Proceeding. Taylor, by his June 8th letter, petitioned the Commission to compel the New York Regional Office to furnish him with the transcript.

7. Coincidentally, on June 8, 1973 Taylor made the instant motion to compel production for inspection and copying of the transcripts of the Administrative Proceeding.

8. By written contract between the Commission and CSA Reporting Corporation dated June 21, 1972, a copy of which is attached as Exhibit 4, the reporter shall have the exclusive right and duty to furnish copies of all transcripts produced by him to any person under terms and prices as specified in the contract.

9. I have informed Taylor on numerous occasions that he could purchase a copy of the transcript by merely ordering the same from the reporting service.

10. The documents requested by Taylor may be essential to his preparation of an appeal to the Commission of the Initial Decision; however, at this point in time, they are not essential or even relevant to the matter before this Court. Moreover, they are, and always have been available to Taylor from the reporting service.


ALAN M. RASHES

Sworn to before me this
22nd day of June, 1973.


NOTARY PUBLIC

DOUGLAS P. JACOBS
Notary Public, State of New York
No. 7057670
Qualified in Kings County
Commission Expires March 30, 1974

DOUGLAS P. JACOBS
Notary Public, State of New York
No. 7057670
Qualified in Kings County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN,

Defendants.

:
:
71 Civ. 2695
R.J.W.

-----x

This is a motion by defendants for an order pursuant to Rule 34(b), Fed. R. Civ. P. requiring plaintiff to produce for inspection and copying the transcript of an administrative hearing held in the Matter of Samuel H. Sloan, et ano. (Adm. Pro. File No. 3-3680). For the reasons hereinafter stated, the motion is denied.

On April 25, 1972, the Securities and Exchange Commission ("Commission") instituted public administrative proceedings against Samuel H. Sloan & Co. and Samuel H. Sloan ("respondents") alleging that respondents had wilfully violated the Commission's Net Capital and Bookkeeping Rules, as well as other provisions of the federal securities laws. The purpose of that proceeding

was to determine whether the various allegations set forth in the Commission's order for proceedings were true and, if so, what, if any, remedial action was appropriate in the public interest.

From October 30, 1972 to November 1, 1972, a hearing in the matter was held before an Administrative Law Judge. Sloan appeared and was represented by counsel. A transcript of the hearing was prepared by a reporter employed by the C.S.A. Reporting Service and, at the conclusion of the hearing, all parties were entitled to purchase a copy of the transcript, numbering some 443 pages. Respondents chose not to do so.

At the conclusion of the hearing, the parties were called upon to file proposed findings of fact and conclusions of law. The Commission, which had purchased a copy of the transcript, allowed Sloan's counsel to come to its offices and examine its copy of the transcript while he was preparing his proposed findings.

After proposed findings had been filed by both sides, the Administrative Law Judge rendered an initial decision in which he found that the evidence adduced at the hearing supported the Commission's allegations and

revoked Sloan & Co.'s broker-dealer registration and barred Sloan from association with any broker-dealer.

Sloan's petition for a review of the Administrative Law Judge's initial decision was granted by the Commission on May 21, 1973 and Sloan was ordered to file his brief within 30 days of receipt of the order for review. This action by the Commission had the effect of staying the sanctions imposed by the Administrative Law Judge, pending review by the Commission. Thus, Sloan was permitted to remain active in the securities business for the time being.

Previously, on May 16, 1973, Sloan's counsel had requested that the Commission release the transcript for his use for one week. The Commission refused counsel's request. On June 8, simultaneously with the filing of this motion, Sloan's counsel requested a 30 day extension for the filing of his brief in the administrative proceeding, stating that he was unable to make use of the New York Regional Office's transcript of the hearing.

The purpose of discovery is to enable a party to discover and inspect material information which by reason of an opponent's control, would otherwise be

unavailable for judicial scrutiny. Rule 34 of the Federal Rules of Civil Procedure provides that relevant and non-privileged documents and objects in the possession of one party be made available to the other, thus, eliminating surprise and permitting the issues to be simplified and the trial to be expedited. U.S. v. Procter and Gamble Co., 14 F.R.D. 230, 232 (D.C.N.J. 1953).

In the instant case the transcript of this public hearing is equally available to all parties on payment of the lawfully prescribed costs. To date, Sloan has chosen not to purchase a copy. Instead he seeks to obtain a copy by a discovery motion.

It is well established that discovery need not be required of documents of public record which are equally accessible to all parties. Komow v. Simplex Cloth Cutting Machine Co., Inc., 109 Misc. 358, 179 N.Y.S. 682 (1919), aff'd, 191 App. Div. 884, 180 N.Y.S. 942 (1920). The Court in komow held that a party is not entitled to discovery and inspection of matters of public record and denied plaintiff's motion for discovery and inspection of the certificate of incorporation of defendant corporation. The transcript

of Administrative Pro. File No. 3-3680 is available to anyone, including Sloan, by purchase from CSA Reporting Service. Like the certificate of incorporation in Komow the requested transcript is a public document available to movant and thus, not discoverable from the Commission.

It has been clear since Griffin v. Illinois, 351 U.S. 12 (1956) that indigent criminal defendants must be provided with stenographic transcripts or otherwise afforded the opportunity for adequate and effective appellate review. However, in the case at bar, which, of course, is not a criminal action, Sloan makes no claim as to his inability to pay for the transcript. Absent a claim and proof of Sloan's inability to pay, it must be assumed that Sloan is financially able to purchase the transcript he desires.

Rather than asserting that Sloan cannot afford to purchase the transcript, his counsel claims that "The expense of these transcripts are paid by funds allotted to plaintiff from taxes produced by the people of these United States and defendant Sloan is one of these people." While imaginative, such an argument is not persuasive.

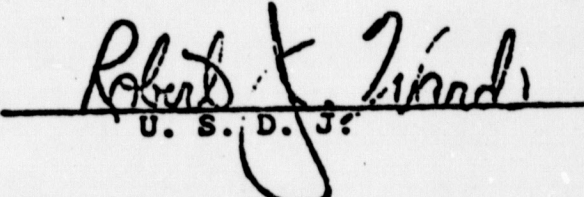
Rule 26(c) of the Federal Rules of Civil Procedure provides that discovery should be allowed unless the hardship is unreasonable in the light of the benefits to be secured from the discovery. Wright and Miller Federal Practice and Procedure, Sec. 2214, p. 648.

To grant Sloan's motion would in the future allow all respondents in administrative proceedings, regardless of how many parties may be involved, to obtain a copy of the transcript on motion, thereby requiring the Commission to purchase additional copies of the transcript and placing an undue burden on the Commission.

The motion is in all respects denied.

It is so ordered.

Dated: August 16, 1973


U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff;

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN,

Defendant.
-----X

:
:
: 71 Civil 2695 RJW
: Judge Ward
:
: NOTICE OF MOTION

Sir:

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel H. Sloan, sworn to on the 25 day of October, 1973 and the exhibits attached thereto and upon the Speical Supplementary Affidavit of Samuel H. Sloan dated on the 14th day of October, 1973 and on the summons and complaint and all the papers and proceedings before this court, defendant will move this court at the U.S. Court House, Foley Square, New York, N.Y. 10007 on the 17 day of November, 1973 at 10 M. or as soon thereafter as defendant can be heard (1) for an order dismissing the complaint or in the alternative vacating the preliminary injunction of June 24, 1971 on the grounds that: (a) the complaint fails to state a claim upon which relief can be granted; (b) plaintiff has failed to prosecute; (c) the terms of the injunction have been fulfilled, certain allegations in the complaint have been proven untrue, and the capital deficiencies, if any, have been cured; (d) plaintiff has failed to join a necessary party; (e) the court lacks subject matter jurisdiction; (f) the existence of the injunction places an unreasonable burdon upon defendant; (g) the action is barred by res judicata; (h) plaintiff has withheld documentary evidence in its possession which disproves certain allegations of plaintiff; (i) it is in the public interest for this action

to be dismissed; (j) plaintiff has sought to deprive defendant of his constitutional rights; and (k) the sections of the Securities Exchange Act of 1934 and the rules thereunder which defendant is alleged to have violated are unconstitutional; (2) for an order staying the effectiveness of any order which might issue as a result of an Administrative Proceeding before the Securities and Exchange Commission on the ground that the initial decision was based upon false testimony by officers of the Commission caused by improper conduct by the S.E.C. attorney handling the case; (3) for an order pursuant to Rule 34(b) of the Federal Rules of Civil Procedure requiring plaintiff to produce a copy of all transcripts of oral depositions taken by plaintiff during its investigation of defendant and for all papers, records, internal memoranda, and work sheets prepared by plaintiff in accordance with its investigation of defendant and for all deposit slips, trial balances, stock record listings, and other records and correspondence of defendant which plaintiff has in his possession including letters which defendant has written to plaintiff, on the grounds such transcripts and documents are necessary to the defense of defendant; (4) for an order permitting defendant to take oral depositions of officers of the Commission on the ground that such depositions are necessary to his defense; and (5) for an order awarding out of pocket costs defendant has incurred as a result of this action and the related administrative proceeding on the ground that plaintiff has acted with malfeasance in connection with this action and in any case the prevailing party is entitled to obtain costs.

Yours, etc.

SAMUEL H. SLOAN
Defendant, pro se.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: SECURITIES AND EXCHANGE COMMISSION,

Plaintiff, :

-against- :

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN,

Defendant. :

71 Civil 2695 RJW
Judge Ward

: AFFIDAVIT IN SUPPORT
: OF MOTION
: -----X

State of New York)

: ss.:

County of New York)

Samuel H. Sloan, being duly sworn, deposes and says:

1. I am the defendant in the above entitled action.

2. I make this affidavit in support of a motion to obtain the following relief: (1) to dismiss the complaint or in the alternative to vacate the preliminary injunction; (2) to stay the effectiveness of any order which might issue as a result of an Administrative Proceeding before the Securities and Exchange Commission; (3) for an order pursuant to Rule 34(b) of the Federal Rules of Civil Procedure requiring plaintiff to produce a copy of all transcripts of oral depositions taken by plaintiff during its investigation of defendant and for all papers, records, internal memoranda, and work sheets prepared by plaintiff in the course of its investigation of defendant and for all deposit slips, trial balances, stock record listings and other records and correspondence of defendant's which plaintiff has in its possession, (4) for an order permitting defendant to take oral depositions of certain officers of the Commission and (5) for an award of costs defendant has incurred as a result of this action.

3. The motion to dismiss should be granted on the grounds of insufficiency of the complaint. The complaint consists of broad allegations of violations of various sections of the

Securities Exchange Act of 1934 and the rules under that Act. Rule 9(b) of the Federal Rules of Civil Procedure requires that when fraud is alleged the circumstances constituting fraud must be stated with particularity. Plaintiff has failed to do this. Rather the complaint attempts to establish a course of action by innuendo rather than by evidence. Paragraph 8 of the complaint states:

"Pursuant to Section 5(a)(1) of said Act, plaintiff has notified S.I.P.C. of the firm's apparent financial difficulties."

4. From a reading of this paragraph one would infer that defendant was apparently experiencing financial difficulties. Such was not the case. At the time of the filing of the complaint, plaintiff had no evidence in its possession that defendant was then experiencing financial difficulties nor has such evidence developed in the two and one half years that have passed since the complaint was filed.

5. Paragraph 10 of the complaint makes the following allegation:

"... said defendants have permitted and are not permitting the aggregate indebtedness of defendant Sloan & Co. to all other persons to exceed two thousand (2,000) per centum of its Net Capital." (emphasis supplied.)

This statement runs contrary to the implications of paragraph 4. Apparently plaintiff takes the position that even if defendant were not in violation of the "Net Capital Rule" at the time the complaint was filed, the fact that violations of its rules had occurred prior to the filing of the complaint was sufficient grounds to sustain this action. This view was rejected by the court in *S.E.C. v. Casper Rogers*, (194 F. Supp 58). This decision established the point that a net capital defect and a violation of the net capital and bookkeeping unlike the violations of other S.E.C. rules. Paragraph

10 fails to allege with sufficient particularity the way in which the capital rule was violated, what computations were involved, and upon what dates these computations were based. Lacking such information defendant is unable to answer the allegations in this paragraph or to prepare his case for trial.

6. Paragraph 14 of the complaint makes allegations which have subsequently been proven to be false. This paragraph states:

" . . . said defendants are permitting and have permitted defendant Sloan & Co. to engage in the business of effecting transactions in securities for the accounts of others and for its own account and during this period it has been and is now making use of the mails and means and instrumentalities of interstate commerce to effect transactions in and to induce its public customers to purchase and sell securities"
(emphasis supplied.)

7. Pursuant to an agreement between the parties and embodied by the Court in the entry of the order of preliminary injunction an audit was conducted of defendant's books and records by a certified public accountant designated by the Commission for the purpose of determining whether defendant had any public customers. The results of this audit were submitted to the Commission on July 29, 1971 and accepted by them. This audit revealed that defendant had no public customers and further that he had capital of \$48,770.32. A copy of the report of the accountant is attached hereto and marked Exhibit A.

8. Paragraph 16 makes further innuendos which have since been proven false. It states in part:

"Furthermore, Sloan & Co. had certain customers whose accounts do not appear on its books and records and consequently, neither it nor the Commission is able to determine what monies are due and owing from time to time, nor is it possible to ascertain from the current condition of Sloan & Co.'s books and records whether any other customers of Sloan & Co., in fact exist."
(emphasis supplied.)

This false allegation was completely refuted by the report prepared by the accountant designated by the Commission. The accountant stated that defendant maintained an exceptionally good control over its records of fails to deliver and fails to receive. He experienced no difficulties with the audit nor did he have any trouble determining that defendant had no public customers. The fact is that the Commission investigator, Mr. Kanoff, had made no effort to visit the offices of defendant and examine his records during the period immediately proceeding the filing of the complaint. While he did come to the office from time to time, his visits were brief and only for the purpose of picking up trial balances. Neither Mr. Kanoff nor any other representative of the Commission made an effort to look at the other records of defendant during the period just before the complaint was filed. Therefore, plaintiff had no evidence on which to base the claim asserted in paragraph 16 of the complaint.

9. Paragraph 17 of the complaint contains wild allegations which are not merely false but are designed with malicious intent. The purpose of this paragraph is to stampede the court into believing that some massive fraud is in the midst of being perpetrated. Defendant did not owe funds or securities to any individuals. He did have open contractual commitments with other brokers in the form of fails to deliver and receive. Contracts of this sort are settled on a delivery versus payment basis. All of the funds and securities in his possession belonged to him and to him alone. Since all the funds and securities on hand were the property of defendant there was no reason to believe that he was likely to waste or misappropriate his own assets.

10. The complaint as a whole in no way represents an effort to provide protection for the public. Rather it is a blatant attempt to destroy the business of defendant based on false

representations. This complaint is not unique. The Commission has acted with malfeasance on many other occasions. Unfortunately, almost none of the victims of official acts of this sort have had the courage to fight an agency with an all pervasive authority such as that of the S.E.C. Staff attorneys of the S.E.C. are virtually free to act with impunity and to ignore the canons of legal ethics. Civil proceedings such as this one are not conducted under a true adversary system. Had an attorney in private practice conducted himself in the manner the S.E.C. attorneys have conducted themselves in this civil proceeding, the related administrative proceeding, and the over-all investigation of defendant's activities, they would not last five minutes in open court and would risk being disbarred. The three attorneys who prepared the memorandum of law in support of a motion for a temporary restraining order acted with utter irresponsibility. The Commission, represented by its legal staff, has made representations to this court and to the Administrative Law Judge which are completely contradicted by evidence available to them but not available to defendant. These matters are described in detail in the Special Supplementary Affidavit. The fact is that there are only an increasingly small number of brokers and dealers who have never been suspended, censured, fined, enjoined, or barred from the securities business as a result of actions by the Commission or by the so-called self-regulatory agencies it regulates. Because of the small number of brokers who are left in a business, which is vital to the economy of this nation, it is against the public interest for the courts to permit this trend to continue. Consequently, it is in the public interest for this action to be dismissed.

11. The complaint is insufficient in that it does not allege that anyone has been damaged by the acts of defendant,

neither does it allege scienter or intent to defraud. At the administrative proceeding, which was based on the same facts as this civil proceeding, the Commission failed to allege either actual damages or willfulness. It is a well established principle of law that mere technical violations of rules are not in and of themselves actionable.

12. Plaintiff has procrastinated for two and one half years in the prosecution of this action. For that reason, this action should be dismissed for failure to prosecute. Plaintiff has not prosecuted because it has no evidence to support the statements made in the complaint and also because it feels that the preliminary injunction grants it its full remedy. Even though a preliminary injunction is intended by its nature to be only temporary, plaintiff has treated this injunction as though it were, in fact, permanent. Defendant originally consented to the preliminary injunction only because he believed it would be a short period of time before the case came to trial. Had he known the Commission was going to use it as it was he would not have consented.

13. The complaint fails to state a claim on which relief can be granted. Since the complaint does not claim that actual damages have occurred or that defendant acted with willful intent to defraud, the action should be dismissed.

14. This court lacks jurisdiction because the amount in controversy does not exceed \$10,000. Since no damages are claimed, these damages cannot be liquidated. The U.S. District Courts are courts of limited jurisdiction. If the court does not possess original jurisdiction, the parties cannot waive the jurisdictional requirement or consent to jurisdiction.

15. The action should be dismissed for failure to join an indispensable party. Paragraph 12 of the complaint alleges certain events over which defendant Sloan did not have complete

control. Since plaintiff has made no attempt to join all the parties, this action should be dismissed.

16. Representatives of plaintiff have acted in such a way as to deprive defendant of his rights under the Fourth Amendment of the U.S. Constitution. These acts are described in great detail in the Special Supplemental Affidavit.

17. Plaintiff has sought to restrain defendant from personally buying and selling securities. Defendant maintains that in passing the Securities Exchange Act of 1934, Congress sought to regulate brokers who buy and sell securities for the public. Defendant further maintains that it was not the intent of Congress to permit the S.E.C. to regulate individuals who confine their activities solely to the purchase and sale of securities for themselves. Defendant has requested a no-action letter which would permit him to transact securities business as he has in the past without being registered as a broker-dealer with the S.E.C. This request was denied. A copy of the letter from the Commission denying the request is attached hereto and marked Exhibit B.

18. The sections of the Securities Exchange Act of 1934 which provide for the registration and regulation of brokers and dealers are unconstitutional. Under the U.S. Constitution, the S.E.C. must limit itself to the investigation and prosecution of actions which involve common law fraud. The regulation of the industry should be undertaken by the securities exchanges and the National Association of Securities Dealers. Defendant is not a member of a stock exchange or of the NASD. At present, the rules of the S.E.C. place an unreasonable burden on defendant and all other brokers and dealers. The Commission is destroying the securities industry by over-regulation.

19. The actions of plaintiff have caused defendant to be subject to triple jeopardy. First defendant is required to

defend himself in this civil proceeding. Secondly, it has been necessary for defendant to defend himself in an administrative proceeding based on the same facts as this civil proceeding. Thirdly, defendant is subject to criminal liability based on the preliminary injunction, which has been a provisional remedy in this proceeding. Officers of plaintiff have stated that defendant might be imprisoned for acts described in the complaint and for subsequent acts. The complaint should be dismissed on this ground and on the grounds of Res Judicata.

20. Plaintiff has attempted to destroy defendant's business. From June 18, 1971 to June 28, 1971 plaintiff instructed Chemical Bank not to pay any checks issued by defendant even though the temporary restraining order signed by Judge McLean expressly permitted the payment of these checks. A copy of the bank statement involving these dates is attached hereto and marked Exhibit C. By causing the bank not to pay any checks, plaintiff effectively coerced defendant into consenting to the preliminary injunction. If defendant had resisted, his reputation would have been so damaged in Wall Street that a victory in court would have been a pyrrhic victory. These circumstances are described in detail in the Special Supplemental Affidavit.

21. Defendant was approached by an individual named Joe Iny who was interested in investing a substantial amount of capital into defendant's business. Ultimately, the deal was never consummated because of the prohibitive restrictions placed by the S.E.C. rules on subordinated loans which are to be considered good capital.

22. If the motion to dismiss is denied, the preliminary injunction should be vacated. Plaintiff originally obtained the injunction by coercing defendant in the manner described in paragraph 20. The terms of the preliminary injunction

were fulfilled with the filing of the certified report contained in Exhibit A. Since that time defendant has filed two certified financial statements with the Commission which show defendant to be in capital compliance. These statements are attached hereto and marked Exhibits D and E.

They demonstrate that defendant had cured any capital deficiencies which may have existed previously. The existence of the injunction places an unreasonable burden on defendant. Defendant was enjoined from violations of the "Net Capital Rule." The new net capital rule, Rule 15c3-3, is so complicated that only the S.E.C. attorneys who drafted the rule and the attorneys for major brokerage firms who specialize in this one rule can be said to understand it fully. In addition, the mere existence of the injunction has prejudiced defendant. Under Rule 252(c)(4) of Regulation A of the Securities and Exchange Commission he is not permitted to undertake a Regulation A offering of securities. Furthermore, under Section 9(a)(2) of the Investment Company Act of 1940 he may not serve in the capacity of an employee, officer, director, member of an advisory board, or investment advisor. The Commission has treated this injunction in such a way as to effectively bar defendant from amending his broker dealer registration, from seeking employment with another brokerage firm, and from going out of the securities business. This is described in the Special Supplementary Affidavit.

23. Plaintiff has used the existence of the preliminary injunction as the basis for an administrative proceeding to revoke defendant's broker dealer registration in accordance with section 15(b)(5)(c) of the Exchange Act. Plaintiff delayed this civil proceeding intentionally for the purpose of keeping it before the courts until October 1972 when the administration hearing was held. Defendant maintains that this is improper since the preliminary injunction was never

intended to be a final determination of this action on the merits although the Commission has treated it as such.

24. The effectiveness of any order resulting from the administrative proceeding should be stayed by this court. This request is made in accordance with the view expressed by members of the Commission staff that the administrative proceeding is ancillary to this action. The Commission offered by way of settlement ^{not to}/order the administrative proceeding provided that defendant would consent to a permanent injunction in this court action. At the administrative hearing the three Commission witnesses other than defendant testified falsely. Bruder testified he did not receive a deposit slip from Sloan showing a deposit of \$10,000. Kanoff testified he did not receive an April, 1971 trial balance from Sloan and that he visited the offices of Sloan on August 10 and August 12, 1971 and observed Sloan buying and selling securities. Rashes referred to these specific points in testimony in his administrative law brief even though he had in his possession the deposit slip which proved Bruder's testimony to be false. These circumstances are described in detail in the Special Supplementary Affidavit.

25. The testimony by officers of the Commission in the administrative hearing was contradicted by two certified financial statements prepared for filing with the Commission. These financial statements and bills, cancelled checks and related correspondence are attached hereto and marked Exhibits F and G.

26. In accordance with Rule 34(b) of the Federal Rules of Civil Procedure defendant should be permitted discovery of the following documents: (1) All papers, records, internal memoranda, and work sheets prepared by plaintiff pursuant to its investigation of defendant; (2) all deposit slips, trial balances, stock record listings and other records and

correspondence which plaintiff has in its possession including letters sent by defendant to plaintiff and (3) all transcripts of oral depositions taken by plaintiff during its investigation of defendant including but not limited to depositions given by Joe Iny, Zia Marashi, Dominek Fiorese, Martin London, Ray Leon, and Sam Sloan. Plaintiff has refused to provide this material to defendant. The material is necessary for the preparation of his defense and will serve to establish the allegations made in this affidavit and in the Special Supplemental Affidavit. This material will also serve to discredit the findings in the Administrative proceeding.

27. Defendant should be granted the opportunity to take depositions of the following officers of the Commission: Sheldon Kanoff, Arthur Bruder, William Nortman, Alan Rashes, Jerome Selvers, and Ralph H. Tracy. Defendant needs these depositions to establish the truth of the allegations made in the Special Supplemental Affidavit. Plaintiff has stated by telephone and by a letter from Thomas R. Beirne that it will resist any attempts to obtain the testimony of any Commission officer and will move to quash any subpoena issued in connection with such attempts. Plaintiff has the power to obtain the testimony from defendant at any time at its will and has used this power on many occasions. It is appropriate and in the interest of fair play that defendant be allowed to obtain the testimony of the officers of plaintiff, prior to the time of trial. Defendant needs this testimony to prepare his defense. Before the administrative hearing, defendant had no idea what the testimony of Bruder and Kanoff would be until they testified. Defendant should not be required to labor under such a severe handicap in this civil proceeding.

28. Defendant should be entitled to an award of costs upon dismissal of this action. It is normal for the court

to make an award of costs to the prevailing party in a civil action. However, since plaintiff in this case is the United States Government, defendant is fearful that the court might be disinclined to make an award of costs. Defendant believes that it is impossible as a practical matter for defendant ever to recover any of the incalculable damages which defendant has suffered as a result of the bringing of this action and the improper acts by officers of the Commission which are detailed in the Special Supplemental Affidavit. Therefore, defendant believes plaintiff should pay him the full amount of actual out of pocket expenses he has incurred as as result of legal and accounting costs related to this action. These costs are as follows: \$1250 for a court ordered financial statement as of June 30, 1971; \$750 for trial balances requested by the Commission; \$800 for a certified financial statement as of July 31, 1972, (this latter cost is included as a legitimate expense related to this action because the S.E.C. required a separate financial statement for defendant's X-17A-5 filing as a result of the administrative proceeding); \$1500 for Attorney Roy L. Weiss who represented defendant in this action during 1971-2; and \$2900 for Attorney Robert W. Taylor who has represented defendant in this action from 1972 to the present. This comes to a total of \$7200.00. Copies of some but not all of the bills, receipts, and cancelled checks are attached hereto and marked Exhibit H.

29. A word is in order regarding attorneys and accountants. The S.E.C. exercises regulatory authority over the attorneys and accountants who practice before the Commission. The Commission has the power to bar an attorney or an accountant from practice before the Commission through the process of an administrative proceeding. It has exercised this power on many occasions. The Commission can also harass an attorney or an accountant and his clients to the extent that the

relationship with his clients is destroyed. In the case in point, an investigative officer of the S.E.C. visited my offices in or about the first part of 1973 and asked to see all my correspondence including bills and receipts from Robert W. Taylor. He also asked to see all the cancelled checks I had paid Mr. Taylor over a two year period. When I failed to produce one of these cancelled checks immediately he made statements which would have intimidated me had I not been a veteran in dealing with officers of the Commission. He made photocopies of all this material and later called me four or five times to ask me further questions about my relationship with Mr. Taylor. Had I been a typical client, full of fear of the Commission, and had I not had complete confidence in Mr. Taylor's ability as an attorney, I would have discontinued his services immediately and obtained another attorney. This would have been difficult because there are few attorneys who are willing to practice before the Commission and to represent small broker dealers. My confidence in Mr. Taylor was buttressed by the fact that Mr. Joe Barton, who has since retired from the Commission, referred me to him initially. However, while Mr. Taylor has never told me so himself, I have strong reason to believe that the S.E.C. has threatened him with administrative action partly because of his representation of me. It is my impression that Mr. Taylor represents or has represented about forty stock brokerage firms. He has served brokerage clients for 22 years. Since he is perhaps the only specialist in this field, his loss would do great harm to the securities industry and to me personally.

30. Mr. Taylor has the right to charge me a lot of money for the services he performs. These services include such ministerial functions as providing a medium of communication between myself and the Commission. Some attorneys do not even charge for routine telephone calls. However, I know from

my dealings with the Commission that even the most innocent telephone conversation can ruffle their feathers and cause them to take drastic action. Both Mr. Weiss and Mr. Taylor have the economic necessity to preserve their legal practice. It is necessary for them to stay on good terms with the Commission. The Commission has in its power the ability to destroy the reputation and practice of both of these men and this fact must be constantly in their minds in their legal representation of me and other clients similarly situated. Both Mr. Weiss and Mr. Taylor have strongly urged me to consent to the permanent injunction and to go along with any sanctions the S.E.C. may wish to impose upon me. I note by reading the New York Law Journal that the S.E.C. seems to be able to obtain a consent decree or other form of censure from any one it wishes to punish without a fight. My lawyers, friends, family, and business associates and people whose opinions I respect have universally urged me to make no effort to fight the S.E.C. Both Mr. Weiss and Mr. Taylor have strongly advised me not to make any statements which might be interpreted as being critical of the Commission. At the hearing before this Court on June 23, 1971, I wanted to jump up and tell Judge McLean on the record that I felt I was being coerced by the Commission into agreeing to a preliminary injunction. Mr. Weiss restrained me from doing so. At the administrative hearing I wanted to give certain testimony which would have, in a rather remote way, appeared to be critical of the Commission. Mr. Taylor, as my attorney, advised me not to do so. I followed his advice.

31. It is with great reluctance that I make this motion pro se. It is not my desire to burden this court with the ramblings of a man who has no formal legal training. I am well aware of the joke that a man who acts as his own lawyer has a fool for a client. I prepared my own motion papers solely as a matter of necessity. I do not believe there is a single

attorney in New York City who would be prepared to make a motion of this sort under these circumstances. I started to read and study the law in the middle of 1972 because I realized that I would be forced to play a major role in the preparation of my own defense in this civil action. I am questioning the powers of the S.E.C. on constitutional grounds because I believe that today, especially in the age of Watergate, the time has come to question the authority of those who represent the government. I would like to believe that the making of this motion will be the first step in an effort to dismantle a governmental agency which has a profound economic effect on the lives of all Americans and which I feel strongly has attempted to deprive me of my constitutional rights.

WHEREFORE, defendant respectfully prays that this court grant his motion (1) for an order dismissing the complaint or in the alternative vacating the preliminary injunction of June 24, 1971; (2) for an order staying the effectiveness of any order which might issue as a result of an Administrative Proceeding before the Securities Exchange Commission; (3) for an order pursuant to Rule 34(b) of the Federal Rules of Civil Procedure requiring plaintiff to produce a copy of all transcripts of oral depositions taken by plaintiff during its investigation of defendant and for all papers, records, internal memoranda, and work sheets prepared by plaintiff in the course of its investigation of defendant and for all deposit slips, trial balances, stock record listings, and other records and correspondence of defendant which plaintiff has in its possession including letters which defendant has written to plaintiff; (4) for an order permitting defendant to take oral depositions of officers of the Commission and (5) for an order awarding out of pocket costs defendant has incurred as a result of this action and the related administrative

proceeding.

Samuel H. Sloan

SAMUEL H. SLOAN

Sworn to before me this
21 day of October, 1973.

John H. Sloan

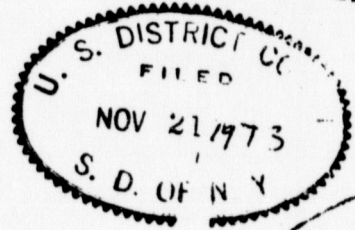
NOTARY PUBLIC

THURSDAY, OCTOBER 25, 1973
Notary Public for the State of New York
Qualified in New York City
Commission Expires March 30, 1977

40

Memorandum Decision

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN,

Defendants.
-----X

: 71 Civ. 2695
: R.J.W.
:

Defendant Samuel H. Sloan ("Sloan") moves to dismiss the complaint, or in the alternative, to vacate the preliminary injunction in this action and for various other relief. For the reasons set forth below, the motion is in all respects denied.

On June 24, 1971, this Court entered an order, on consent, which preliminarily enjoined Samuel H. Sloan & Co. ("Sloan & Co.") and Sloan from further violations of the Securities and Exchange Commission's ("the Commission") net capital and bookkeeping rules. Thereafter, on April 25, 1972 the Commission instituted public administrative proceedings against Sloan & Co. and Sloan based upon allegations by its Division of Enforcement that Sloan & Co. and Sloan had wilfully violated the net capital and book-

keeping rules as well as other provisions of the federal securities laws. The purpose of those proceedings was to determine whether the allegations of violations set forth in the Commission's Order for Proceedings were true and, if so, what, if any, remedial action was appropriate.

A hearing was held beginning on October 30, 1972 and continuing through November 1, 1972 before an Administrative Law Judge. Sloan was represented by Robert W. Taylor, the attorney who has represented him in the instant action up to the filing of the present motion which was made pro se.

On April 25, 1973 the Administrative Law Judge filed his Initial Decision in which he concluded that "the record of the registrant and Sloan as evidenced by the violations found in this proceeding, reflect an unwillingness or a lack of capacity to operate as a broker-dealer in conformity with applicable law and regulations." He ordered that the registration of Sloan & Co. as a broker-dealer be revoked and that Sloan be barred from association with a broker-dealer. This decision is presently on review to the Commission.

Since February, 1973 this Court has held four pre-trial conferences all of which were attended by counsel for the parties. At the most recent conference, in October, 1973, the Court set the case down for trial on December 10, 1973, all efforts to dispose of this matter by agreement of the parties having proved futile.

Sloan's pro se motion for an order dismissing the complaint or vacating the preliminary injunction and other relief, served approximately one month before trial in this matter is scheduled, appears to be a misguided attempt to impede rather than advance the disposition of this litigation. The Court notes that Mr. Sloan is not a stranger to litigation in this Court. In Sloan v. Nixon (73 Civ. 2230), an attempt was made to enjoin President Nixon from continuing in office. Judge Bauman, in dismissing that suit, commented that Sloan's action was the "nadir" of "many misguided law-suits" seen over a lifetime.

The issues raised by Sloan on the present motion are totally lacking in substance. His incomplete papers (no memorandum of law was filed) fail to present any facts or legal arguments to support his contention that the relief heretofore sought and obtained against him and his firm is unjustified. This decision will deal briefly with Sloan's contentions.

The plaintiff fails to state a claim upon which relief could be granted.

The claim on which this request for relief is based is that Sloan endangered the investing public by operating the firm of Sloan & Co. in violation of the federal securities laws. Specifically, at the time the preliminary injunction

was entered, the complaint alleges that Sloan & Co. and Sloan were operating while in violation of the net capital rule. Sloan places great emphasis on the fact that the complaint contains a typographical error in that the words "now permitting. . ." read "not permitting. . ." with regard to net capital violations. However, a full reading of paragraph 10 of the complaint leaves no doubt that what is alleged is that from some time prior to January 29, 1971 to the date of the complaint, June 17, 1971, Sloan & Co. was violating and Sloan, aiding and abetting violations of the net capital rule.

Sloan's claim in his moving papers that there is no basis for an allegation of financial difficulty is one of the issues to be determined at the trial on December 10, 1973. Clearly, the complaint states a claim on which relief can be granted.

Plaintiff has failed to prosecute.

It is the general rule that a trial court has the inherent power to dismiss an action for failure to prosecute or to comply with the rules of federal procedure or any order of the court. There is no evidence "that the plaintiff has been dilatory in prosecuting the case or inclined to deliberately disobey any order of the Court for the purpose of delay."

Meeker v. Rizley, 324 F.2d 269, 271 (10th Cir. 1963). Nor has Sloan explained why he did not move earlier to lift the preliminary injunction. At the most recent pre-trial conference, approximately one month ago, the Court set December 10, 1973 as the trial date with the consent of counsel for the parties. Sloan's unsupported argument that the action should be dismissed for failure to prosecute is without merit.

The terms of the injunction have been fulfilled. Certain allegations in the complaint have been proven untrue and capital deficiencies, if any, have been cured."

The Commission has represented that it is prepared to prove that the terms of the injunction have been violated and that the net capital deficiencies which existed previously have re-occurred. If, in fact, any of the allegations of the complaint are untrue, Sloan will have the opportunity to demonstrate this at the forthcoming trial.

Sloan's claim at this late date that he was coerced into consenting to the preliminary injunction is unsupported by any credible evidence. Sloan argues that since his bank would not honor all of his checks, he was therefore coerced into consenting to the preliminary injunction. However, his claim of coercion is contradicted by the terms of the injunction which states that "No tender, offer, promise or threat of any kind whatsoever has been made by plaintiff, Securities and Exchange Commission by any principal, officer, agent, or representative thereof in consideration of the foregoing

consent." On the present state of the record it would appear that Sloan voluntarily and on the advice of counsel consented to a preliminary injunction. Plaintiff has failed to join a necessary party.

From the papers it is extremely difficult to ascertain Sloan's position in this regard. It appears, however, that reference is made to paragraph 12 of the complaint regarding the preparation of a financial statement which contained false information. Sloan is apparently claiming that the accountant or other party who prepared his financial statement should be joined as a necessary party. If such is, in fact, his claim, it is without merit. The responsibility for filing accurate reports with the Commission, is not delegable and therefore rests with Sloan.

The Court of Appeals for the Second Circuit has consistently dismissed petitions to review enforcement-related determinations of the Commission. Independent Investors Protective League v. Securities and Exchange Commission, No. 71-1924 (2d Cir., Nov. 15, 1971); Leighton v. Securities and Exchange Commission, No. 26,458 (2d Cir., Nov. 3, 1960), certiorari denied, 365 U.S. 888 (1961); Cf. Peck v. Securities and Exchange Commission, No. 22,829 (2d Cir., Apr. 7, 1952).

The Commission in enforcement proceedings, may determine whom it wishes to name as a defendant. It is not required to join all parties.

The Court lacks subject matter jurisdiction.

In the instant case, subject matter jurisdiction is expressly conferred by Section 27 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78aa.

The extent of the injunction places an unreasonable burden upon defendant.

The Court is of the view that the Commission in its original papers made a "proper showing" of need for injunctive relief. Securities and Exchange Commission v. Bennett & Co., 207 F. Supp. 919 (D.N.J. 1962); Securities and Exchange Commission v. Broadwall Securities, Inc., 240 F. Supp. 962 (S.D.N.Y. 1965).

"Proper showing" has been defined as a "justifiable basis for believing, derived from reasonable inquiry or other credible information, that such a state of facts probably existed as reasonably would lead the Commission to believe that the defendants were engaged . . ." in violation of the statutes involved. Federal Trade Commission v. Rhoades Pharmacal Co., 191 F.2d 744, 747-748 (7th Cir. 1951).

The action is barred by res judicata.

Inasmuch as there has been no final determination of this action by any court, res judicata does not apply. See

American S.S. Co. v. Wickwire Spencer Steel Co., 8 F. Supp. 562, 566 (S.D.N.Y. 1934), wherein the Court held that "the rule of res judicata is that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on the points and matters determined in the former suit".

The sections of the Securities Exchange Act of 1934 and the rules thereunder which the defendant is alleged to have violated are unconstitutional.

As Professor Loss notes, "The question of constitutionality of the SEC statutes generally belongs to a bygone day." 1 L. Loss, Securities Regulation, 178, n.1, 2 ed. 1961. The constitutionality of the Securities Exchange Act has been upheld in a number of cases. See, e.g., Wright v. Securities and Exchange Commission, 112 F.2d 89 (2d Cir. 1940); Charles Hughes & Co. v. Securities and Exchange Commission, 139 F.2d 434 (2d Cir. 1943), cert. denied, 321 U.S. 786 (1944).

The remaining contentions advanced by defendant in support of his motion to dismiss have been considered and found by this Court to be so totally lacking in merit as not to warrant discussion.

In seeking an order staying the effectiveness of any order which "might" be issued as a result of the administrative proceeding before the Commission, Sloan is premature.

As noted above, the Initial Decision revoking Sloan's broker-dealer registration and barring him from being associated with any broker-dealer in the securities industry is presently on review to the Commission. Thus, "the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted" applies. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938). In the event of an unfavorable decision, Sloan has a right to appeal to the proper Court of Appeals. Section 25 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78y.

Sloan's claim that the Initial Decision was based on false testimony by officers of the Commission and by improper conduct of the SEC attorney handling the case is likewise premature. Moreover, the credibility of the witnesses was for the trier of the facts, in this case the Administrative Law Judge. This claim as well as the claim of alleged improper conduct of the SEC attorney handling the case should in the first instance be presented to the Commission.

Finally, Sloan requests discovery. As noted above, throughout this entire proceeding, Sloan has been represented by counsel. Robert W. Taylor, Esq. represented him at all

pre-trial conferences in this matter. At a pre-trial conference on February 9, 1973, Mr. Taylor requested adequate time for discovery. The Court granted the request and allowed Mr. Taylor 90 days. At this late date with the case scheduled for trial in less than one month, allowing Sloan to commence discovery proceedings would only serve to unreasonably delay the trial which was scheduled for December 10, 1973 with the consent of Mr. Taylor.

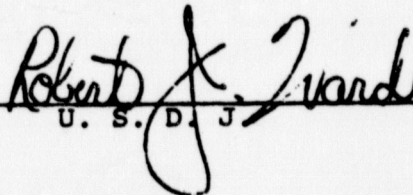
Moreover, Sloan's request to depose the Administrative Law Judge together with the various Commission attorneys and investigators would be burdensome and oppressive as well as improper. See Hickman v. Taylor, 329 U.S. 495 (1947).

In any event, the Commission points out that Sloan is aware of the bulk of its evidence, since it has been previously presented in the public administrative proceeding and is contained in the transcripts of the proceeding.

Accordingly, the motion is in all respects denied.

It is so ordered.

Dated: November 20, 1973



U. S. D. J.

ties and Exchange Commission was granted, to require Commission to produce transcript of hearing before such judge for inspection and copying. The District Court, Robert J. Ward, J., held that Commission could not be required to produce transcript for inspection and copying.

Motion denied.

1. Federal Civil Procedure \S 1558

Discovery need not be required of documents of public record which are equally accessible to all parties. Fed. Rules Civ.Proc. rule 34(b), 28 U.S.C.A.

2. Federal Civil Procedure \S 1558

Where petitioners, whose petition for review of administrative law judge's decision in proceedings instituted against them by Securities and Exchange Commission was granted, could purchase transcript of hearing before such judge from reporting service and it was not shown that petitioners were unable to pay, Commission could not be required to produce such transcript for inspection and copying by petitioners. Fed. Rules Civ.Proc. rules 26(c), 34(b), 28 U.S.C.A.

3. Criminal Law \S 1077.2(1)

Indigent criminal defendant must be provided with stenographic transcripts or otherwise afforded opportunity for adequate and effective appellate review.

SECURITIES AND EXCHANGE
COMMISSION, Plaintiff,

v.

SAMUEL H. SLOAN & CO. and Samuel
H. Sloan, Defendants.

No. 71 Civ. 2695.

United States District Court,
S. D. New York.

Aug. 16, 1973.

Proceeding on motion by petitioners, whose petition for review of administrative law judge's decision in proceedings instituted against them by Securi-

William D. Moran, Regional Administrator S. E. C., New York City, for plaintiff; Jerome Mitchell Selvers, New York City, Thomas R. Beirne, Ossining, N. Y., of counsel.

Robert W. Taylor, New York City, for defendants.

ROBERT J. WARD, District Judge.

This is a motion by defendants for an order pursuant to Rule 34(b), Fed.R. Civ.P. requiring plaintiff to produce for inspection and copying the transcript of

an administrative hearing held in the Matter of Samuel H. Sloan, et ano. (Adm.Pro. File No. 3-3680). For the reasons hereinafter stated, the motion is denied.

On April 25, 1972, the Securities and Exchange Commission ("Commission") instituted public administrative proceedings against Samuel H. Sloan & Co. and Samuel H. Sloan ("respondents") alleging that respondents had wilfully violated the Commission's Net Capital and Bookkeeping Rules, as well as other provisions of the federal securities laws. The purpose of that proceeding was to determine whether the various allegations set forth in the Commission's order for proceedings were true and, if so, what, if any, remedial action was appropriate in the public interest.

From October 30, 1972 to November 1, 1972, a hearing in the matter was held before an Administrative Law Judge. Sloan appeared and was represented by counsel. A transcript of the hearing was prepared by a reporter employed by the C.S.A. Reporting Service and, at the conclusion of the hearing, all parties were entitled to purchase a copy of the transcript, numbering some 443 pages. Respondents chose not to do so.

At the conclusion of the hearing, the parties were called upon to file proposed findings of fact and conclusions of law. The Commission, which had purchased a copy of the transcript, allowed Sloan's counsel to come to its offices and examine its copy of the transcript while he was preparing his proposed findings.

After proposed findings had been filed by both sides, the Administrative Law Judge rendered an initial decision in which he found that the evidence adduced at the hearing supported the Commission's allegations and revoked Sloan & Co.'s broker-dealer registration and barred Sloan from association with any broker-dealer.

Sloan's petition for a review of the Administrative Law Judge's initial decision was granted by the Commission on May 21, 1973 and Sloan was ordered to

file his brief within 30 days of receipt of the order for review. This action by the Commission had the effect of staying the sanctions imposed by the Administrative Law Judge, pending review by the Commission. Thus, Sloan was permitted to remain active in the securities business for the time being.

Previously, on May 16, 1973, Sloan's counsel had requested that the Commission release the transcript for his use for one week. The Commission refused counsel's request. On June 8, simultaneously with the filing of this motion, Sloan's counsel requested a 30 day extension for the filing of his brief in the administrative proceeding, stating that he was unable to make use of the New York Regional Office's transcript of the hearing.

The purpose of discovery is to enable a party to discover and inspect material information which by reason of an opponent's control, would otherwise be unavailable for judicial scrutiny. Rule 34 of the Federal Rules of Civil Procedure provides that relevant and non-privileged documents and objects in the possession of one party be made available to the other, thus, eliminating surprise and permitting the issues to be simplified and the trial to be expedited. *United States v. Procter and Gamble Co.*, 14 F. R.D. 230, 232 (D.C.N.J.1953).

In the instant case the transcript of this public hearing is equally available to all parties on payment of the lawfully prescribed costs. To date, Sloan has chosen not to purchase a copy. Instead he seeks to obtain a copy by a discovery motion.

[1, 2] It is well established that discovery need not be required of documents of public record which are equally accessible to all parties. *Komow v. Simplex Cloth Cutting Machine Co., Inc.*, 109 Misc. 358, 179 N.Y.S. 682 (1919), *aff'd*, 191 App.Div. 884, 180 N.Y.S. 942 (1920). The Court in *Komow* held that a party is not entitled to discovery and inspection of matters of public record and denied plaintiff's motion for discov-

ery and inspection of the certificate of incorporation of defendant corporation. The transcript of Administrative Pro. File No. 3-3680 is available to anyone, including Sloan, by purchase from CSA Reporting Service. Like the certificate of incorporation in *Komow* the requested transcript is a public document available to movant and thus, not discoverable from the Commission.

[3] It has been clear since *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956) that indigent criminal defendants must be provided with stenographic transcripts or otherwise afforded the opportunity for adequate and effective appellate review. However, in the case at bar, which, of course, is not a criminal action, Sloan makes no claim as to his inability to pay for the transcript. Absent a claim and proof of Sloan's inability to pay, it must be assumed that Sloan is financially able to purchase the transcript he desires.

Rather than asserting that Sloan cannot afford to purchase the transcript, his counsel claims that "The expense of these transcripts are paid by funds allotted to plaintiff from taxes produced by the people of these United States and defendant Sloan is one of these people." While imaginative, such an argument is not persuasive.

Rule 26(c) of the Federal Rules of Civil Procedure provides that discovery should be allowed unless the hardship is unreasonable in the light of the benefits to be secured from the discovery. *Wright and Miller, Federal Practice and Procedure*, Sec. 2214, p. 648.

To grant Sloan's motion would in the future allow all respondents in administrative proceedings, regardless of how many parties may be involved, to obtain a copy of the transcript on motion, thereby requiring the Commission to purchase additional copies of the transcript and placing an undue burden on the Commission.

The motion is in all respects denied.
It is so ordered.

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,

v.

Samuel H. SLOAN and Samuel H. Sloan & Co., Defendants.

No. 71 Civ. 2695.

**United States District Court,
S. D. New York.**

Jan. 7, 1974.

Securities and Exchange Commission brought action seeking injunctive and other relief against broker-dealer and its sole proprietor for alleged violations of Securities Exchange Act of 1934 and rules promulgated thereunder. The District Court, Robert J. Ward, J., held that evidence established that dealer had violated provision of Act by failing to properly maintain, keep current and preserve certain of its books and records, that dealer violated another provision by effecting transactions in securities otherwise than on a national securities exchange and that defendants, while engaged in unlawful acts, practices and course of business, had made use of mails and means and instruments of transportation and communications in interstate commerce, and of means and instrumentalities of interstate commerce, and effected the transactions otherwise than on a national securities exchange. The Court further held that permanent injunction would issue.

Judgment entered accordingly.

1. Securities Regulation §177

Evidence established that from about January 15, 1971 through January 1972 as well as from May 1973 and thereafter, broker-dealer, under direction of sole proprietor, willfully violated provision of Securities Exchange Act of 1934 by failing to properly maintain, keep current and preserve certain of records, including records reflecting all assets and liabilities, income and expense and capital accounts, a securities

Cite as 300 F.Supp. 990 (1974)

record, a firm trading account, ledgers reflecting securities failed to receive and failed to deliver, trial balances, and computations of aggregate indebtedness and net capital. Securities Exchange Act of 1934, § 17(a), 15 U.S.C.A. § 78q(a).

2. Securities Regulation § 177

Evidence established that from about January 18, 1971 through January 1972, as well as in May and August 1973, broker-dealer, under direction of a sole proprietor, willfully violated provision of Securities Exchange Act of 1934 by effecting transactions in securities otherwise than on a national securities exchange when its aggregate indebtedness to all other persons exceeded 2000 per centum of its net capital and its net capital was less than \$5,000 or \$15,000 as required. Securities Exchange Act of 1934, § 15(c)(3), 15 U.S.C.A. § 78o(c)(3).

3. Securities Regulation § 177

Evidence established that broker-dealer and its sole proprietor, while engaged in acts, practices and course of business in violation of provision of Securities Exchange Act of 1934, had made use of mails and means and instruments of transportation and communication in interstate commerce, and of means and instrumentalities of interstate commerce, and effected the transaction otherwise than on a national securities exchange. Securities Exchange Act of 1934, § 15(c)(3), 15 U.S.C.A. § 78o(c)(3).

4. Securities Regulation § 171

Broker-dealer and its sole proprietor, which had violated provisions of Securities Exchange Act of 1934 by failing to properly maintain, keep current and preserve certain of dealer's books and records by effecting transactions in securities otherwise than on a national securities exchange when dealer's aggregate indebtedness to all other persons exceeded 2000 per centum of its net capital and its net capital was less than

\$5,000 or \$15,000 as required, would be permanently enjoined from further committing such violations. Securities Exchange Act of 1934, §§ 15(c)(3), 17(a), 15 U.S.C.A. § 78o(c)(3), 78q(a).

William D. Moran, New York City, for plaintiff; Jerome Mitchell Selvers, New York City, Thomas R. Beirne, Ossining, N. Y., and William Nortman, New York City, of counsel.

Samuel H. Sloan, pro se.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ROBERT J. WARD, District Judge.

On June 17, 1971, plaintiff Securities and Exchange Commission ("Commission") filed a complaint against defendants Samuel H. Sloan ("Sloan") and Samuel H. Sloan & Co. ("Sloan & Co.") seeking injunctive and other relief for alleged violations of Sections 15(b)(1), 15(c)(3) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78o(b)(1), 78o(c)(3) and 78q(a), and Rules 17 C.F.R. 240.15b1-2, 15c3-1, 17a-3 and 17a-4 promulgated thereunder ("Broker-Dealer Registration", "Net Capital" and "Bookkeeping Rules").

Thereafter, on June 24, 1971, this Court entered an order, on consent, which preliminarily enjoined defendants from further violations of the net capital and bookkeeping requirements of the federal securities laws.

The action was tried, non-jury, in December 1973 and the Court now makes the following findings of fact and conclusions of law:¹

Findings of Fact

1. The Commission is authorized to bring this action pursuant to Section 21(e) of the Exchange Act, as amended, 15 U.S.C. § 78u(e).

2. Sloan & Co. is a sole proprietorship and had its office and place of busi-

ness in New York City. The Commission abandoned all claims other than its claim for a permanent injunc-

ness at 120 Liberty Street, New York, New York. The office was closed on August 16, 1973. Sloan & Co. has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), since May 10, 1970. Sloan is the sole proprietor and manager of Sloan & Co.

1. *Violations of Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-3 promulgated thereunder.*

3. During January and February 1971, Arthur Bruder ("Bruder"), an investigator on the staff of the Commission, visited the office of Sloan & Co. for the purpose of determining whether the books and records of Sloan & Co. were being maintained properly and on a current basis.

4. During March, April, May, June and August 1971, Sheldon Kanoff ("Kanoff"), also an investigator on the staff of the Commission, visited the office of Sloan & Co. for the same purpose.

5. During May, June and August 1973, George Appoldt ("Appoldt"), another investigator on the staff of the Commission, visited the office of Sloan & Co. for a similar purpose.

6. On August 16, 1973, Kanoff, accompanied by Jerome Selvers ("Selvers"), an attorney on the staff of the Commission, visited the office of Sloan & Co. for the same purpose.

7. As a result of his January 1971 examination of Sloan & Co.'s books and records, Bruder determined that as of January 15, 1971, Sloan & Co. failed to maintain properly and keep current the following books and records: (a) General Ledger—not properly maintained in that capital and income and expense items were improperly recorded; (b) Trading Account—not maintained currently; (c) Trial Balance—not prepared; (d) Account Record of bank balances—not maintained; (e) Fail to Receive Ledger; Fail to Deliver Ledger; Stock Record—not maintained currently.

8. Sloan was informed by the Commission of Bruder's determination and was asked to furnish a trial balance and supporting schedules. A trial balance was submitted on January 18, 1971. However, supporting schedules showing firm inventory and fails to deliver and receive were not furnished and Bruder was unable to make a capital computation based on the submission.

9. On February 25, 1971, Bruder observed that neither the stock record nor the customer ledger of Sloan & Co. was up to date, and, since capital was not properly recorded, that the general ledger was inaccurate.

10. On March 19, 1971, Kanoff observed that the books and records of Sloan & Co. indicated a capital contribution of \$58,000 by Mr. Joseph Iny. In fact, Mr. Iny never contributed capital to Sloan & Co. but was, instead, a customer of the firm. In addition, although the books and records of the firm included shares of Kaiser Steel Industries in the firm trading account, these shares were at all times part of Mr. Iny's customer account.

11. On April 8, 1971, Kanoff observed that Sloan & Co. did not have a complete set of books and records. All that he found were machine run debit and credit slips from which a capital contribution could not be prepared and which did not provide the information which is to be included in books and records required to be maintained under Rule 17a-3.

12. On May 6, 1971, Kanoff requested but did not obtain the delivery tickets relating to sales and, on June 9, 1971, Kanoff requested but did not obtain a trial balance as of the end of May 1971.

13. On August 12, 1971, Kanoff observed that the general ledger of Sloan & Co. was only posted through July 31, 1971, in violation of Rule 17a-3. This was less than two months after Sloan & Co. and Sloan had consented to a preliminary injunction enjoining them from further violations of the rules.

14. Moreover, the firm's trading information submitted to the Commission in August 1971 was inaccurate, in that it included certain securities which had not been returned to the firm of J. S. Sloan & Co., and therefore, were not in the possession of Sloan & Co.

15. Sloan & Co. did not prepare timely capital computations from January 1, 1971 through December 31, 1971, as required by Rule 17a-3.

16. On May 29 and 30, 1973, Appoldt reviewed entries on the books and records of Sloan & Co. indicating payments for consulting fees but no entries reflecting employees' salaries. Attempts to verify these entries were unsuccessful. On the other hand, Hafdis Simonson testified that she was employed by Sloan & Co. from September 1972 to May 1973 and that there was at least one other employee, Johanna Baldursttir.

17. On August 2, 1973, Appoldt observed that the firm's books and records were not current as they were only posted through July 30, 1973.

18. The trial balance submitted by Sloan & Co. as at August 2, 1973 fails to disclose trades in Canadian Javelin, Ltd. ("Canadian Javelin") stock. In addition, the trial balance fails to disclose that shares of Canadian Javelin were borrowed by Sloan & Co. and were, in fact, owed to other broker-dealers.

19. On August 16, 1973, Appoldt visited Sloan & Co. to inspect the firm's capital computations. Sloan did not furnish them and informed him that he would bring them to the Commission's New York Regional Office later that day. When Sloan failed to appear at the Commission's office, Kanoff and Selvers went to Sloan & Co.'s offices and asked Sloan for the firm's capital computations. Sloan was unable to produce the requested capital computations.

20. At no time since August 16, 1973 has Sloan made his books and records

available for inspection by the Commission staff, although numerous efforts were made by the Commission to arrange such an inspection.

II. Violations of Section 15(c)(3) of the Exchange Act, 15 U.S.C. § 78o(c)(3) and Rule 15c3-1 promulgated thereunder.

21. On January 25, 1971, Bruder prepared from the books and records of Sloan & Co. a trial balance as of January 18, 1971. Based upon this trial balance and other information obtained from the books and records of Sloan & Co. and using the pink sheets and public journals for pricing purposes, Bruder determined that Sloan & Co. had an adjusted net capital deficiency of \$28,016 as of January 18, 1971.²

22. Thereafter, Bruder prepared from the books and records of Sloan & Co. a trial balance as of January 29, 1971. Based upon this trial balance and other information obtained from the books and records of Sloan & Co. and using the pink sheets and public journals for pricing purposes, Bruder determined that Sloan & Co. had an adjusted net capital deficiency of \$11,912 as of January 29, 1971.

23. On March 18, 1971, Kanoff prepared from the books and records of Sloan & Co. a trial balance as of February 26, 1971. In determining the net capital of Sloan & Co., Kanoff treated \$58,000 owed to Mr. Joseph Iny as a liability instead of a capital item. Using the pink sheets for pricing purposes, Kanoff determined that Sloan & Co. had a net capital deficiency of \$15,961 as of February 26, 1971.

24. Sloan & Co. submitted to the Commission a balance sheet and supporting documents as of June 30, 1971. Sloan & Co.'s own computations prepared by its accountant, Robert W. Taylor & Co., reflected a net capital deficit

² The adjusted net capital is current assets, less liabilities, less deductions to allow for market fluctuations for securities held. When this figure is less than zero dollars, a deficit

results. The total deficiency in this deficit, plus the required minimum capital, at that time \$5,000 and later \$15,000.

of \$19,231. Based on the submitted documents, Kanoff determined that Sloan & Co. had a net capital deficiency of \$24,222 as of June 30, 1971.

25. Sloan & Co. submitted to the Commission trial balances and supporting schedules as of July 31, August 31, September 30, October 8, November 30, and December 31, 1971 and January 31, 1972. Using the pink sheets for pricing purposes, Kanoff determined that Sloan & Co. had net capital deficiencies as follows:

July 31, 1971	\$70,864.
August 31, 1971	\$16,588.
September 30, 1971	\$24,529.
October 8, 1971	\$ 8,345.
November 30, 1971	\$ 9,810.
December 31, 1971	\$13,480.
January 31, 1972	\$ 718.

26. Subsequent to his determination of net capital deficiencies as of July 31, August 31, September 30, October 8, November 30, and December 31, 1971, Kanoff met with the accountant for Sloan & Co. and based upon additional information furnished at that time, Kanoff adjusted the net capital deficiencies to reflect capital deposits by Sloan & Co. which had previously been treated as liabilities. After including these additional funds as capital, Sloan & Co. still had net capital deficiencies as follows:

July 31, 1971	\$70,064.
August 31, 1971	\$15,789.
September 30, 1971	\$10,729.
October 8, 1971	\$ 7,545.
November 30, 1971	\$ 4,010.
December 31, 1971	\$ 4,557.

27. During the period from January 1971 through January 31, 1972, Sloan & Co. continued to effect transactions in securities in interstate commerce and otherwise than on a national securities exchange as demonstrated by the following:

(a) In January 1971, Bruder overheard telephone conversations wherein Sloan gave or received quotations on

prices of stock, and, in addition, found changes in the firm's inventory;

(b) On March 19, 1971, Kanoff overheard Sloan giving quotations on prices of stock, and, in addition, observed confirmations lying about the office, securities being delivered by runners and entries in the firm's checkbooks;

(c) On April 8, 1971, Kanoff overheard telephone conversations wherein Sloan gave or received quotations on securities, and, in addition, observed runners entering and leaving the office and observed confirmations and securities on the premises;

(d) On May 6, 1971, Kanoff overheard telephone conversations concerning securities and observed the presence of runners and securities in the office;

(e) On August 10, 1971, Kanoff observed confirmations with current dates about the office and securities in view;

(f) On August 12, 1971, Kanoff overheard telephone conversations concerning securities, and observed recent confirmations of trades and the preparation of tickets for the firm's record keeping service;

(g) A comparison of the trial balances for July 1971 and August 1971 indicates that Sloan & Co. was receiving and delivering securities, and paying checks;

(h) A comparison of the trading account for the months ending July 31, 1971, August 31, 1971 and September 30, 1971 indicates that Sloan & Co. entered into at least seven transactions, which represented new business;

(i) During the month of August 1971, Sloan & Co. transferred to the brokerage firm of J. S. Love & Co. a number of securities, including securities resulting from the transaction of new business, which, as noted above, were represented according to the firm trading inventory submitted to the Commission, as being in the possession of Sloan & Co.;

(j) In December 1971, Sloan & Co. applied to the National Quotation Bureau for listing in the pink sheets;

SECURITIES AND EXCHANGE COMMISSION v. SLOAN

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Cite as 300 F.Supp. 936 (1974)

(3) In January 1972, Sloan & Co. listed bid and asked quotations for a number of securities with the National Quotation Bureau, and in the pink sheets.

28. On May 29 and 30, 1973, Appoldt prepared from the books and records of Sloan & Co. a trial balance as of May 24, 1973. Based upon this trial balance and other information obtained from the books and records of Sloan & Co. and from the pink sheets and public journals for pricing purposes, Appoldt determined that Sloan & Co. had a net capital deficiency of \$4,333 as of May 24, 1973.

29. On August 6, 1973, Sloan & Co. submitted to the Commission a trial balance containing only a schedule of positions as of August 2, 1973. This schedule omitted all trades in Canadian Javelin. Based upon this trial balance, Appoldt determined that Sloan & Co. had a net capital deficiency of \$20,046 as of August 2, 1973.

30. The parties have stipulated for the purposes of this lawsuit, that as a result of trading in Canadian Javelin, defendants sustained a loss of \$40,000. Thus, Sloan & Co. had a net capital deficiency in excess of \$20,046 as of August 2, 1973.

31. During the months of May 1973 and August 1973, Sloan & Co. continued to effect transactions in securities in interstate commerce and otherwise than on a national securities exchange as demonstrated by the following:

(a) An examination of the firm's trial balances, as well as the fact that in May 1973, Appoldt overheard telephone conversations concerning securities and observed confirmations lying about the firm's office;

(b) In August 1973, Kanoff observed confirmations and order tickets, some of which bore current dates, and securities lying about the firm's office, as well as entries in the firm's checkbooks.

Conclusions of Law

1. This Court has jurisdiction under Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

2. The Court finds that

[1] 2. From on or about January 15, 1971 through January 31, 1972, as well as from May 1973 to date, Sloan & Co., under the direction of Sloan wilfully violated Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rules 17a-3 and 17a-4 promulgated thereunder, in that Sloan & Co. failed to properly maintain, keep current and preserve certain of its books and records, including: Ledgers or other records reflecting all assets and liabilities, income and expense and capital accounts; A securities record or ledger; A firm trading account; Ledgers (or other records) reflecting securities failed to receive and failed to deliver; Trial balances (or other records of all ledger accounts); and Computations of aggregate indebtedness and net capital.

[2] 3. From on or about January 18, 1971 through January 31, 1972 as well as May and August 1973, Sloan & Co., under the direction of Sloan wilfully violated Section 15(c)(3) of the Exchange Act, 15 U.S.C. § 78o(c)(3), and Rule 15c3-1 promulgated thereunder, in that Sloan & Co. effected transactions in securities (other than exempted securities or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange while and at a time when its aggregate indebtedness to all other persons exceeded 2,000 per centum of its net capital and, in addition, its net capital was less than \$5,000 or \$15,000 as required.

[3] 4. While engaged in the above described acts, practices and course of business, defendants, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce, and effected the transactions otherwise than on a national securities exchange.

[4] 5. The issuance of a permanent injunction is necessary to protect the public against the continuation or repetition of the above described violations

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and, unless permanently enjoined, there is a likelihood that the defendants will continue to engage in violations of the Exchange Act and the Rules promulgated thereunder.

Settle judgment on notice.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN

Defendants.

71 Civil 2695 (RJW)

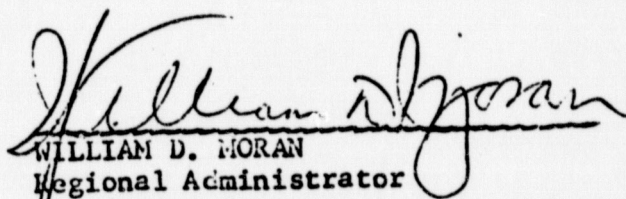
NOTICE OF SETTLEMENT

S I R S:

PLEASE TAKE NOTICE that a Judgment of Permanent Injunction against defendants Samuel H. Sloan & Co. and Samuel H. Sloan of which the within is a true copy will be presented for settlement and signature to the Honorable Robert J. Ward, Judge of the United States District Court for the Southern District of New York, on Friday, , January 18, 1974 at 10:00 a.m. at the Office of the Clerk of the Court, Room 601, United States Court House, Foley Square, New York, New York 10007.

Dated: New York, New York
January 9, 1974

To:
Samuel H. Sloan
120 Liberty Street
New York, New York


WILLIAM D. MORAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone NO.: (212) 264-1636

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JAN 21 1974
S.D.N.Y.

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN & CO.
SAMUEL H. SLOAN

Defendants.

78 Civil 2695 (RJW)

JUDGMENT OF PERMANENT
INJUNCTION

MICROFILM
JAN 22 1974

A Complaint in this action having been filed on June 17, 1971, and this action having come on before the Court, the Honorable Robert J. Ward, District Judge, presiding and an evidentiary hearing having been held and the Court's Findings of Fact and Conclusions of Law, pursuant to Rule 52 of the Rules of Civil Procedure for the United States District Courts, having been filed on January 7, 1974, it is hereby

ORDERED, ADJUDGED AND DECREED that defendants Samuel H. Sloan & Co. and Samuel H. Sloan, their officers, nominees, agents, servants, employees, attorneys and those persons in active concert or participation with them and each of them, be and they hereby are permanently enjoined from:

- (1) Directly or indirectly making use of the mails or means or instrumentalities of interstate commerce to effect any transactions in or to induce or to attempt to induce the purchase of securities while registered with the Commission as a broker-dealer in securities:

- (a) while and at a time when the aggregate indebtedness of defendant Sloan & Co., or any other registered broker-dealer of which defendant Sloan becomes a principal or controlling person, to all other persons exceeds two thousand (2,000) per centum of its net capital as required by Section 15(c)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(3) and Rule 17 C.F.R. 240.15c3-1 thereunder;
- (b) while and at a time when the adjusted net capital of defendant Sloan & Co. or any broker-dealer registered with the Commission of which Sloan becomes a principal or controlling person is less than a minimum as required under the Net Capital Rule of the Securities Exchange Act of 1934; and
- (c) while and at a time when defendant Sloan & Co.'s books and records or those of any broker-dealer registered with the Commission of which Sloan becomes a principal or a controlling person are not made, kept and maintained pursuant to Section 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(a) and Rules 17 C.F.R. 240.17a-3 and 17a-4 thereunder.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter for all purposes.

Robert J. Nix
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 18, 1974

JUDGMENT ENTERED JAN 22 1974
~~SO ORDERED:~~

Raymond E. Burghardt
CLERK

TRUE COPY
RAYMOND E. BURGHARDT, Clerk

By Ed Becker
Deputy Clerk

Stoant. Sec

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the *4* day of *Sept*, 1975 deponent served the within *Appendix* upon *Sec*.

attorney(s) for

appellee

in this action, at

26 Federal Plaza

N x C

10007

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

[Signature]
.....
ROBERT BAILEY

Sworn to before me, this
4 day of *Sept*, 1975.

[Signature]
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1976

